

## FORMAL ISSUE PAPER

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BOARD OF EQUALIZATION  
**KEY AGENCY ISSUE**

4/20/99 ☐ Board Meeting  
☒ Business Taxes Committee  
☐ Customer Services Committee  
☐ Legislative Committee  
☐ Property Tax Committee  
☐ Technology & Administration Committee  
☐ Other

## AMENDMENT OF REGULATIONS 1541 "PRINTING AND RELATED ARTS" AND 1502 "COMPUTERS, PROGRAMS, AND DATA PROCESSING"

### I. Issue

Should Sales and Use Tax Regulation 1541, *Printing and Related Arts* and Regulation 1502, *Computers, Programs, and Data Processing* be amended as proposed?

### II. Staff Recommendation

Staff recommends that the format of Regulation 1541 be reorganized to make the regulation more easily understood by the public. Staff further recommends amending the regulation to remove confusing and unnecessary language and to add updated definitions and explanations of printing terminology and practices. Recommended changes include clarifying language related to the application of tax to desktop publishing, special printing aids, restorative work by color separators, and composed type (Staff's Proposal — Regulation 1541).

### III. Other Alternative(s) Considered

Amend Regulation 1541 as proposed by the Printing Industries of California (PIC) to provide that desktop publishing be considered custom programming; that tax be owed on either the selling price or cost of special printing aids depending on the sale of the printed material; that alterations of film by color separators be considered repair labor; that composed type include charts, tables and graphs; that clip art incorporated into text through the printing process be considered nontaxable de minimis art; and that all other artwork be considered nontaxable de minimis art if the artwork occupies 10% or less of the printed material (Alternate Proposal 1 — Regulation 1541). In addition, amend Regulation 1502 to provide that desktop publishing be considered custom programming (Alternate Proposal 1 — Regulation 1502).

## IV. Background

As a result of Taxpayer Bill of Rights hearings, staff was directed to revise Sales and Use Tax Regulation 1541 to address the outdated and difficult to interpret language.

A copy of staff's initial proposed revision to Regulation 1541 was provided to interested parties including the Printing Industries of California (PIC) on March 17, 1998. On February 8, 1999, the PIC submitted a draft of their proposed regulatory language. Staff then met with industry representative, Mr. Gerald Bonetto from PIC on February 22, 1999, to discuss the changes proposed by industry. After reviewing industry's proposed regulatory language, staff prepared the initial analysis for a formal issue paper regarding the proposed amendments to Regulations 1541 and 1502. Copies of the initial analysis paper were sent to interested parties on March 11, 1999. Mr. Bonetto submitted his written response to the analysis paper on March 26, 1999.

Discussion – Desktop Publishing; Regulation 1541 Subdivision (a)(5) and Regulation 1502 Subdivision (c)(4), (d)(2), (d)(5)(B)(4)

Desktop publishing involves the preparation of copy and layout designs through the use of publishing software and computers. Layouts may be comprised completely of text, or a combination of text and artwork.

Industry believes the creation and transfer of the results of desktop publishing by computer disk or other electronic storage media should be considered a custom computer program under Section 6010.9. Both Regulation 1541 *Printing and Related Arts* and Regulation 1502 *Computers, Programs, and Data Processing* are affected by this position.

Industry contends the desktop publishing issue is identical to the case of custom designs on computer disks that were inserted into a computer controlled embroidery machine that produced the desired product (fabric) with the design reproduced on the fabric. The Board determined the transfer of the design by computer disk was the transfer and sale of a custom computer program under Section 6010.9.

Industry reasons that the application of tax to the sale of a custom design transferred to the customer by computer disk should be treated in the same manner regardless of whether the customer then uses that computer disk to cause the design to be produced on fabric, paper or some other material. The computerized process is virtually identical regardless of the form of output. Therefore, original information created by a desktop publisher and transferred by that person on computer disk should be exempt from tax. Industry believes their proposed amendment brings Regulations 1541 and 1502 into conformity with the Board's decision in this area.

Staff disagrees that the results of desktop publishing constitute a custom computer program under Section 6010.9. The result of desktop publishing is a computer

data file, not a computer program. As defined in Section 6010.9, programs provide a computer with a complete set of instructions for solving a problem or processing data. On its own, a data file cannot operate or instruct the computer to perform a function. In addition to the disk with the data file, the customer must also have the necessary software so that the software can instruct the computer to access and use the information stored on the transferred disk. The true object of the contract between the publisher and the customer is not a computer program, but a disk containing a data file.

For example, a desktop publisher is hired to design a layout for a newsletter. Incorporating both text and graphics, the publisher designs the layout using Pagemaker commercial software. The publisher then saves the electronic file containing the layout to a computer disk which is transferred to the customer. The true object of the contract between the publisher and the customer is the computer disk containing the electronic data file of the newsletter layout. Although the electronic file shows how the finished layout is supposed to look, it is not a program. The computer disk transferred by the publisher cannot instruct the computer to open the data file or print the information stored on the disk. The person using the disk must have Pagemaker software in order to access and use the information stored on the file.

#### **Discussion – Purchases by Printers; Subdivision (b)(2)**

The first two sentences of this subdivision state, “Printers are consumers of tangible personal property which is not sold prior to use or physically incorporated into the article to be sold. Tax applies to the sale of such property to the printer and also to any sale subsequent to its use by the printer.”

For clarity, industry suggests revising the next two sentences to read, “Such property includes, but is not limited to, machinery (e.g., electronic pre-press equipment, plate makers), and office equipment. The application of tax to special printing aids is explained in subdivision (c).”

Staff agrees to add industry’s examples of machinery, but disagrees that industry’s suggestion clarifies the meaning of the section. By stating that the application of tax to special printing aids is discussed in subdivision (c), the reader may be confused and believe the first two sentences of section (b)(2) would never apply to special printing aids. In addition, not all printing aids are special printing aids. Using industry’s wording, only the application of tax to special printing aids is explained; the general rule that explains the application of tax to any printing aid is not given.

Staff believes the two sentences should read, “Such property includes, but is not limited to, machinery (e.g., printing presses, cameras, electronic pre-press equipment, plate makers), office equipment and printing aids. Printers, however, may purchase special printing aids for resale as explained in subdivision (c).”

**Discussion – Special Printing Aids; Subdivision (c), (c)(2) and (c)(3)(C)**

“Special printing aids” are defined as reusable manufacturing aids which are used by the printer during the printing process and are of unique utility to a particular customer. Examples of special printing aids include films, single or multicolor separation negatives, silk screens, artwork, and cutting dies.

Tax applies to a printer’s purchase of special printing aids (or the raw materials if the special printing aids are fabricated by the printer) regardless of the fact that the printer may subsequently sell the aids to the customer who purchased the printed matter. However, if the contract of sale between the printer and the customer provides that title to the special printing aids passes to the customer prior to the physical use of the aids in the printing process, the printer may purchase the special printing aids (or the raw materials) for resale. Tax then applies to the printer’s sale of the special printing aids to the customer. The measure of tax includes charges for the fabrication of raw materials into special printing aids.

If title to the special printing aids passes to the customer in California prior to use, then the retail sale is subject to tax even though the special printing aids may subsequently be shipped to a point outside California. Tax applies regardless of whether the invoice upon which the special printing aids are billed is for printed matter the sale of which is nontaxable (e.g., exempt sale in interstate commerce, an exempt periodical, or a sale for resale).

The Board presumes, in the absence of evidence to the contrary, that special printing aids were sold by a printer to his customer prior to use if: (1) the special printing aids are separately listed and priced either upon the same sales invoice by which the printed matter is billed or on a separate invoice; (2) a statement is included on the sales invoice for the printed matter that title to the special printing aids passes to the customer at the printer’s place of business prior to use by the printer; or, (3) the printer and the customer enter into an explicit agreement prior to the time the special printing aids are used, that title to the aids will pass to the customer before they are used. Declarations of the parties after the transaction is completed are of little value as evidence because of their self-serving nature. The intention of the parties to transfer title prior to the use of the property should be clearly expressed in writing, constituting a part of the contract of sale entered into by both parties prior to the use of the property.

Industry believes the current presumptions of Regulation 1541 burden printers with unnecessary paperwork. The presumptions can require the exchange of documents between buyer and seller for no purpose other than to be in conformity with the regulation. The current presumptions create a “tax trap” whereby, if a printer makes a slight paperwork mistake, a “double tax” can result in which the printer will be required to pay tax on both the cost of the special printing aids and the selling price of those aids. To avoid unnecessary paperwork and tax traps, industry suggests revising the regulation to include several presumptions related to the passage of title.

First, industry proposes that the passage of title be dependent upon the form of the transaction regarding the sale of the printed matter. For printed material ultimately subject to tax or sold to the U.S. Government, it is presumed by industry that the selling price of the material includes the selling price of the special printing aids, and that title to the special printing aids passes to the customer regardless of whether the printer separately itemizes the special printing aids. It is further presumed by industry that no use is made of the special printing aids prior to their sale. Accordingly, the printer may purchase the special printing aids for resale. "Ultimately subject to sales tax" is defined to include sales for resale. In other words, if a printer sells printed material that is taxable, or nontaxable as a sale for resale, or nontaxable as a sale to the U.S. Government, any special printing aids used to produce the printed material are considered sold to the customer prior to any use by the printer. The sales price of the special printing aids is considered to be included in the sales price of the printed material.

If the printer does not wish to sell the special printing aids in connection with the sale of printed material ultimately subject to tax or sold to the U.S. Government, they may include a statement on their sales invoice that states the selling price of the printed material does not include the transfer of title to the special printing aids. The printer would be the consumer of the special printing aids and owe tax on their cost.

Second, with respect to all other sales of printed material (e.g., sales in interstate commerce, sales of exempt newspapers or periodicals, or sales of exempt printed sales messages) it is presumed by industry that the selling price of the printed material does not include the selling price of the special printing aids. The printer is considered the consumer of the special printing aids and tax would apply to the cost of the special printing aids to the printer regardless of whether the printer lists the cost of the special printing aids on the invoices as one of the costs of producing the printed matter.

If the printer wishes to sell special printing aids in connection with these other sales of printed material, the printer may separately list and price the special printing aids on the sales invoice and charge sales tax on the selling price of the special printing aids. Tax would apply to the sale of these special printing aids unless the printer received a timely resale certificate which described the property to be purchased for resale as "special printing aids". It is then presumed that the printer sold and passed title to the special printing aids prior to use; accordingly the printer may purchase the special printing aids for resale.

Industry contends these presumptions eliminate unnecessary paperwork and "tax traps," while ensuring that all special printing aids are subject to tax, but subject to tax only once.

Staff disagrees with industry's presumptions of title transfer. The transfer of title to special printing aids should not depend on how the printed material is sold. Using the printed material's form of sale to determine if title to the special printing aid transfers is inconsistent with standard Uniform Commercial Code (UCC) rules. Staff is aware of no legal precedent that supports the allowance of industry's presumptions.

Under industry's proposal, a person would be unable to determine if the printer is the retailer or consumer of the special printing aids from the face of the documents. Two sets of transaction documents could look identical, however the results would differ based on the purchaser. For example, a printer prints a brochure using a color separation. The color separation meets the requirements of a special printing aid. The printer invoices the customer \$500 for the job with no separate statement or title clause related to the special printing aid. If the purchaser is a California consumer of the printed material, the printer is the retailer of the special printing aid and the sales price of the aid is considered included in the \$500. As a retailer, the printer should have purchased the color separation for resale.

However, if the purchaser was located outside California and the sale of the printed material was a sale in interstate commerce, the printer is considered the consumer of the special printing aid. The printer could not purchase the color separation for resale. The \$500 selling price of the printed material would not include the sales price of the special printing aid.

An additional problem can arise when the sale of the printed material is nontaxable for more than one reason (e.g., printed material sold to the U.S. Government and shipped outside California, or an exempt periodical sold to a print broker for resale). The status of the printer as the retailer or the consumer of the special printing aid cannot be determined because the transaction falls under both industry presumptions. For example, a printer produces an exempt periodical for a print broker who will resell the periodical to a non-profit organization. The printer uses a film which is considered a special printing aid. The transaction falls under industry's first presumption because the printed material is a sale for resale and the printer is considered the retailer of the special printing aid. However, the transaction also falls under industry's second presumption because the printed material is an exempt periodical and the printer should be considered the consumer of the special printing aid.

Staff disagrees that sales for resale should be considered "ultimately subject to sales tax". The property purchased for resale may be sold in interstate commerce and, thus, never subject to California tax.

Staff recognizes that the current regulation language has caused confusion and compliance problems within the printing industry. For this reason, staff revised the subsection related to special printing aids and established a bright-line test for determining the transfer of title within its proposed regulatory language. Staff believes its proposed language clearly explains the correct procedures for determining the passage of title to special printing aids.

#### **Discussion – Alterations by Color Separators; Subdivision (d)**

Color separations are generally a series of films used as a printing aid in the production of color print work. In the initial comments from industry, Mr. Glenn Bystrom from Ernst & Young, LLP, explained that alterations to color separations include situations when the color separator must repair a film that was damaged

during shipping. In the meeting with industry on February 22, 1999, Mr. Gerald Bonetto further explained that alterations include situations where the film is altered because the client requests a change after the final film is completed and sent out for production of the printed material.

In general, labor to repair or restore tangible personal property to its original condition is not subject to tax. However, tax applies to charges for producing, fabricating or processing tangible personal property for consumers in California. Producing, fabricating and processing include any operation which results in the creation or production of tangible personal property or which is a step in a process or series of operations resulting in the creation or production of tangible personal property.

Industry proposes the regulation state "Alterations of film work by a color separator shall be considered charges for restoring property to its original condition and not subject to tax." They contend this regulatory language will relieve industry from the burden of maintaining detailed records describing the specific operation performed. In addition, they state the term "restoration" is not a term used by industry.

Staff agrees that the alterations to color separations such as the restorative work described by Mr. Bystrom are nontaxable repair labor. However, the alterations described by Mr. Bonetto are clearly a step in the process of completing the end color separation and should be taxed as fabrication labor.

Although staff makes every effort to use industry terminology, the term "alteration" is too general and may lead color separators to incorrectly believe that fabrication labor is also exempt. To minimize confusion, staff suggests the regulation read, "Charges to restore film to its original condition by a color separator are not subject to tax." With respect to bookkeeping, the records printers must keep to support the exemption for repair labor are no more burdensome than the records repairers from other fields of industry are required to keep.

#### **Discussion – Charts, Tables and Graphs Considered Composed Type; Subdivision (e)(1)**

The composition of type, or typography, is considered the performance of a service, and the charge for typography is not subject to tax unless it is a part of the sale of printed matter. The Board's current interpretation of Section 6010.3 includes type, together with plain, straight, fancy or curved lines, in the definition of composed type.

Charts and graphs are used to visually illustrate an idea and are regarded as artwork under the current interpretation of Section 6006 because of their graphic nature. A table that consists of text, or text surrounded by a border of lines would be considered typography and not subject to tax.

Industry believes charts, tables and graphs are nothing more than numbers, letters, and lines and should be included in the definition of composed type.

They contend both the Legislature and the Board have previously defined “art” in a sales and use tax context in Section 6365. Conspicuous by its absence is any mention of charts, tables, and graphs.

Staff disagrees that all charts and graphs should be considered typography. Charts and graphs are visual art in that they provide a graphic illustration of an idea. Although Section 6365 does not contain the words “charts, tables and graphs,” it does define a “work of art” to include a work of graphic art. It is the nature of the chart, graph, or table that determines if the item is artwork or typography.

For example a typical pie chart is composed of a circle intersected by straight lines to make “wedges”. The chart may also include some limited text and numbers. In staff’s opinion the chart is clearly graphic artwork even though it is comprised only of letters, numbers and lines. On the other hand, a table comprised of three columns of text and straight-line borders around each column is considered composed type. The table doesn’t visually express an idea, it is merely a method of organizing and segregating the text.

#### **Discussion — De Minimis Artwork; Subdivision (e), (e)(2), (e)(3), (e)(4)**

In general, artwork is considered a sale of tangible personal property and subject to tax when sold to a consumer in California. Under current practice, if the property transferred includes a number of pages, some containing text and artwork and some containing text only, tax applies to charges for any page that includes artwork while no tax applies to charges for any page that includes only text.

The topic of de minimis artwork involves two issues: De minimis “clip art” and the 10% “de minimis” test.

##### **De Minimis Clip Art**

“Clip art” generally refers to graphic images taken from commercial software packages. Rather than create their own graphic artwork, designers copy an electronic file that contains the desired image from commercial software. The image is then inserted into the printed text where it can be moved, enlarged or reduced by a computer mouse “point and click” process.

Industry believes all clip art and computer generated art that is incorporated through the printing process into printed material which contains the text should be considered de minimis artwork. They further believe de minimis artwork should not be subject to tax.

Industry reasons that this “point and click” process is identical to the process by which composed type is edited and incorporated into the proof. For example, inserting a paragraph from one document into another and then causing that paragraph to be underlined by “point and click” utilizes the same process and is considered nontaxable typography.

Industry contends that when the exemption for composed type, Section 6010.3, was enacted in 1968, clip art and computer generated art were virtually non-existent. At that time, generally all artwork was created by an artist and then



incorporated into the composed type by hand. The time and effort to create that artwork was significant. Today's advances in technology have eliminated the previous artistic efforts that were required to incorporate this type of art into production materials. Since the process by which text and clip art is stored, edited, and generally processed in a computer is, for all practical purposes, identical, industry believes the resulting tax treatment should be the same.

Staff disagrees that the method of how artwork is inserted into text has any bearing on the application of tax. Typography is nontaxable because the real object sought by the buyer is the service of composing type and not the tangible personal property that is transferred. That is, the true object of the contract is the service itself and any tangible personal property transferred is incidental to providing that service.

However, when artwork is incorporated into text, the true object of the contract becomes a sale of tangible personal property and not the performance of a service. The customer wants that graphic image and the tangible personal property transferred is no longer incidental to the typography service. The fact that advances in technology have made it easier to insert, move, reduce or enlarge graphic images does not change the true object of the contract.

An additional problem is that the term "clip art" has not been clearly defined. Although clip art commonly refers to images on commercial "off the shelf" software, potentially the term clip art could encompass any image previously stored on a computer file. For instance, a designer could create a library of computer graphics they have designed themselves. Since the designer only has to "point and click" to insert the image into a document, the artwork could be considered clip art even though it was produced by the designer. It is also foreseeable that term clip art could be extended to include photographs that are digitally stored on computer disks. Again, the designer only has to "point and click" to insert the photograph into the text.

#### 10% De Minimis Test

Industry believes that in addition to clip art, other artwork is "de minimis" if the artwork occupies 10% or less of the printed material containing text, which is produced through the printing process. Again, they believe de minimis artwork should not be subject to tax. If the artwork exceeds the 10% threshold, tax would apply to the fair retail value of the artwork. Industry contends the 10% test is consistent with other Board regulations such as Regulation 1603, *Taxable Sales of Food Products*, subdivision (a)(2)(B) "Complementary Food and Beverages."

As discussed under "clip art" above, staff disagrees with the concept of de minimis art because when artwork is incorporated into text, the true object of the contract becomes a sale of tangible personal property and not the performance of a service. Each page that includes artwork is considered a sale of tangible personal property regardless of the percentage of space the artwork encompasses on that page.

In addition, staff disagrees that computing tax based on the number of pages that contain artwork imposes an unnecessary bookkeeping burden upon industry.

Industry will need to retain the same records to support their results of the 10% de minimis threshold test.

### **Additional Revisions**

In addition to the above topics, the following revisions have been proposed by staff:

“Special Printing Aid.” Subdivision (a)(1). Add “special” to “printing aid” for clarification. Industry agrees with staff to change the reference. As a result of this change, staff has also added “of unique utility to a particular customer” to correct the definition of “special printing aid.”

“Sales by Printers.” Subdivision (b)(1). Delete the word “retail” in the last sentence. The word is unnecessary. Industry and staff agree.

“Color Separators.” Subdivision (d). Add the words “but are not limited to,” to the third sentence. Industry and staff agree. Add the words “or the printer as described in subdivision (c).” to the end of the fourth sentence. Staff also proposes to add the words, “and printers” after color separators in the fourth sentence.

In addition, before the last sentence of the section, add “However, property that will be consumed in the printing process and that does not become physically incorporated into the article sold may not be purchased for resale. Separators and printers are the consumers of such property.” Staff believes this language clarifies which items are consumed by printers and separators, and which items may be purchased for resale.

“Composed Type.” Subdivision (e)(1). Add the word “nontaxable” to the second paragraph of the subdivision. Add the sentence “Composed type includes type together with lined borders and plain, straight, fancy or curved lines.” to the third paragraph of the subdivision. Industry and staff agree to both of these changes.

“Photocomposition (Including Phototypesetting and Computer Typesetting).” Subdivision (e)(2). Add the term “desktop publishing.” Industry and staff agree. Delete the second sentence of the second paragraph which begins, “A transfer of type matter combined with artwork...” and replace with, “For transactions in which there is a transfer of type matter combined with artwork, see subdivision (e)(3).” In addition, move the next sentence which begins, “If the transferred property includes...” to the end of (e)(3) and revise to add “However” to the beginning of the sentence so that the new sentence reads “However, if the transferred property includes...”

“Mailing.” Subdivision (f). Industry and staff agree to the proposed regulatory language.

“Signs, Show Cards, and Posters.” Subdivision (g). Industry and staff agree to the proposed regulatory language.

“Examples of Specific Application of Tax.” Subdivision (h). Staff included examples to provide printers additional guidance regarding the application of tax. However, based on industry concerns, staff agrees to delete the subdivision. Staff believes the staff proposed regulatory language is clear and will be understood by the public even without the examples.

## **V. Staff Recommendation**

### **A. Description of the Staff Recommendation**

Staff recommends that the format of Regulation 1541 be reorganized to make the regulation more easily understood by the public. Staff further recommends amending the regulation to remove confusing and unnecessary language and to add updated definitions and explanations of printing terminology and practices. Recommended changes include clarifying language related to the application of tax to desktop publishing, special printing aids, restorative work by color separators, and composed type (Staff's Proposal — Regulation 1541).

### **B. Pros of the Staff Recommendation**

- Custom computer programs — Consistent with the definition of computer program included in Section 6010.9.
- Special printing aids — Provides a bright-line test for the treatment of special printing aids.
- Special printing aids — Consistent with UCC rules regarding transfer of title.
- Composed type — Consistent with the Board's current interpretation of Section 6010.3 regarding charts, tables and graphs. Also consistent with the definition of artwork included in Section 6365.
- Artwork — Provides a simple method of calculating the measure of tax when artwork is included with text.

### **C. Cons of the Staff Recommendation**

- Contrary to the request of the printing industry.

### **D. Statutory or Regulatory Change**

Requires amendment to Regulation 1541, *Printing and Related Arts*.

### **E. Administrative Impact**

None other than the normal regulatory process.

### **F. Fiscal Impact**

#### **1. Cost Impact**

Cost would be minimal and absorbable.

**2. Revenue Impact**

None.

**G. Taxpayer/Customer Impact**

Minimal impact. Regulatory amendment will provide additional clarification.

**H. Critical Time Frames**

None.

**VI. Alternative 1****A. Description of the Alternative**

Amend Regulation 1541 as proposed by the Printing Industries of California (PIC) to provide that desktop publishing be considered custom programming; that tax be owed on either the selling price or cost of special printing aids depending on the sale of the printed material; that alterations of film by color separators be considered repair labor; that composed type include charts, tables and graphs; that clip art incorporated into text through the printing process be considered nontaxable de minimis art; and that all other artwork be considered nontaxable de minimis art if the artwork occupies 10% or less of the printed material (Alternate Proposal 1 — Regulation 1541). In addition, amend Regulation 1502 to provide that desktop publishing be considered custom programming (Alternate Proposal 1 — Regulation 1502).

**B. Pros of the Alternative**

- Consistent with the request of the printing industry.
- Custom computer programs – Reduces the measure of tax liability within the industry.
- Special printing aids – May simplify reporting for some taxpayers.
- Composed type – Charts, graphs and tables – Reduces the measure of tax liability within the industry and simplifies reporting for some taxpayers.
- Artwork – Reduces the measure of tax liability within the industry and simplifies reporting for some taxpayers.

**C. Cons of the Alternative**

- Custom computer programs – Contrary to the definition of computer program included in Section 6010.9.
- Special printing aids – Contrary to current practices and UCC rules regarding transfer of title.
- Special printing aids – Presumptions may contradict when special printing aids are exempt for more than one reason.

- Alterations by color separators – Inconsistent with the application of tax to other industries.
- Composed type – Contrary to the definition of artwork included in Section 6365.
- Artwork – Contrary to the principal that the true object of the contract is a sale of tangible personal property, not the performance of a service.
- Artwork – Does not define clip art. Potentially, photographs and artwork developed by the seller could be considered clip art.

**D. Statutory or Regulatory Change**

Requires amendment to Regulation 1541, *Printing and Related Arts* and Regulation 1502, *Computers, Programs, and Data Processing*.

**E. Administrative Impact**

Staff will require notification of the changes of interpretation, as will taxpayers.

**F. Fiscal Impact**

**1. Cost Impact**

Cost would be minimal and absorbable.

**2. Revenue Impact**

See Revenue Estimate

**G. Taxpayer/Customer Impact**

As the proposed changes substantially change current Board practices, the alternative would have a significant impact on industry. Will require detailed explanation of how tax applies to special printing aids, composed type, and artwork.

**H. Critical Time Frames**

None.

BOARD OF EQUALIZATION  
**REVENUE ESTIMATE**

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**AMENDMENT OF REGULATIONS 1541 – PRINTING AND RELATED ARTS  
AND 1502 – COMPUTERS, PROGRAMS, AND DATA PROCESSING  
ISSUE PAPER NUMBER 99-015**

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### **Alternative Proposal**

The alternative proposal 1) provides that desktop publishing be considered custom programming, 2) creates several presumptions regarding special printing aids, 3) considers alterations of film by color separators to be repair labor, 4) defines charts and graphs to be composed type, 5) considers clip art incorporated into text to be nontaxable de minimis art, and 6) considers other artwork to be de minimis if it comprises 10% or less of the printed material.

### **Background, Methodology, and Assumptions**

The above six items are the main areas of difference covered in the issue paper. Staff's proposed language clarifies existing Regulation 1541 and is consistent with the current interpretation of the regulation. Staff's proposal, therefore, does not increase or decrease sales tax revenues. The language proposed by industry for each of the items, however, would reduce sales tax revenues because it changes tax application in six areas.

Data regarding the tax currently collected on the items under discussion are not reported to the Board. Also, we have found no summary statistics that are directly on point from any other sources. This paucity of data is at least partially a result of two conditions:

1) The use of computers in the printing and related industries to both produce and transmit material has increased dramatically and has affected the sales tax treatment of many transactions. Further, it can be expected that the industry will continue to evolve rapidly in the future. Consequently, the limited data available from the 1992 Census of Manufactures is of even more limited use for evaluating the effect of proposals in the world of today or tomorrow.

2) The lines between various segments in the printing and related arts industry are blurred. Businesses in the industry may perform a variety of functions, and the delineation between functions is not necessarily clear. For example the Sacramento Yellow Pages lists 45 businesses under "desktop publishing and service bureaus." Of those, 11 are also listed under "graphic designers." Of the 11, three are also shown under "typesetting," and one of the three is also shown under "printers."

Staff has discussed the proposals at length, and even though we lack hard data, we believe we can offer an informed opinion as to the relative magnitude of the effect of the six items under consideration:

Color separators. From the standpoint of a revenue effect, this appears to be the smallest of the six. The annual impact is probably less than \$100,000 in tax.

Special printing aids. This has been an area of some confusion in the past. Nevertheless, tax has been reported correctly on most transactions. Statistics from the Board's audit program for the last three years show assessments resulting from the taxpayers' incorrect treatment of "printing aids" to have been about \$1,300,000 in tax, annually. The intent of the industry proposal appears to be to eliminate those assessments that result in a special printing aid being taxed twice solely because taxpayers do not correctly complete the required documentation.

However, staff feels that the proposed language under the alternative is unclear and could result in confusion and potential revenue loss. For example, staff is concerned with the presumption that the selling price of the printed material includes the selling price of the special printing aid regardless of whether or not the printer separately itemizes the charge for the special printing aid.

Printers who currently separately itemize their charges may continue to exclude the sales price of the printing aid from the charge for the printed matter. Consequently, the sales price of the special printing aid could inadvertently be excluded from the reported taxable measure since it is presumed that the charge for the printed material includes the special printing

aid. Thus, no tax would be collected on the sales of numerous printing aids, and a tax reduction in the millions would result.

Desktop publishing, charts and graphs, and two items regarding de minimis artwork. These items likely have a larger revenue impact than the apparent intent of the two discussed above. They also overlap and are interrelated. For example, for a given transaction, considering charts and graphs to be nontaxable composed type rather than taxable artwork could remove enough artwork that the remaining artwork would fall below the 10% de minimis level. In order to gauge the potential order of magnitude of these items, consider the total taxable sales of commercial art and graphic design businesses (as classified by the Bureau of the Census). Starting with an estimate of their taxable sales in 1992 (the last published census) and adjusting for estimated growth, we estimate that 1999 total taxable sales of these businesses will amount to \$1,017 million. Only a small percentage of their sales would be affected by the differences in the proposed regulation. (On the other hand, not all of the transactions affected by the differences would involve commercial artists or graphic designers.) If sales equal to 1 percent of the taxable sales of commercial artists or graphic designers were affected by the industry proposals, the sales affected would be \$10.17 million and the tax reduction would be \$805,000. If sales equal to 5 percent were impacted, the sales affected would be \$50.85 million and the tax reduction would be \$4,027,000. Although the percentage of taxable sales associated with the printing industry covered by this proposal is relatively small, the total of all printing industry taxable sales is large enough that the revenue effect of any one of these four items potentially could be several million dollars annually in sales and use tax.

## Revenue Summary

The estimated annual sales and use tax revenue reduction of the alternate proposal is as follows:

Color separators:           less than \$100,000.

Special printing aids:    from less than \$1,000,000 to in the millions,  
                                  depending upon interpretation of the proposed  
                                  language.

Four proposals regarding desktop publishing, charts and graphs, and de minimis artwork: several million dollars for any one of the four with a total effect dependent upon how many of the four are accepted and their interaction with each other.



## **Preparation**

This revenue estimate was prepared by Jeff Reynolds, Statistics Section, Agency Planning and Research Division. It was reviewed by Vic Anderson, Supervisor, Audit Evaluation and Planning Section, Sales and Use Tax Department. For additional information, please contact Mr. Reynolds at (916) 445-0840.

Current as of April 8, 1999

### Regulation 1541 – Printing and Related Arts

#### *Comparison Between Staff's Version and the Installer's Proposed Language*

Current Regulatory Language	Staff's Proposed Regulatory Language	Industry's Proposed Regulatory Language	Staff Recommendation and Comments
<p>(a) Generally. Tax applies to charges for printing, lithography, photolithography, rotogravure, gravure, silk screen printing, imprinting, multilithing, multigraphing, mimeographing, photostating, steel die engraving, and similar operations for consumers, regardless of whether or not the paper and other materials are furnished by the consumer.</p> <p>NOTE: Moved to subdivision (b)(1) of staff's proposed regulatory language.</p>	<p>(a) Definitions.</p> <p>(1) <u>Special Printing Aid</u>. The term "special printing aid" means a reusable manufacturing aid which is used by a printer during the printing process <u>and is of unique utility to a particular customer</u>. Examples of <u>special</u> printing aids include, but are not limited to, electrotypes, stereotypes, photoengravings, silk screens, steel dies, cutting dies, lithographic plates, artwork, film, single color or multicolor separation negatives, and flats.</p> <p>(2) <u>Printing Process</u>. The term "printing process" includes, but is not limited to, letterpress, flexography, gravure, offset lithography, reprography, screen printing, steel-die engraving, thermography, laser, inkjet, and photocopying.</p> <p>(3) <u>Reproduction Proof</u>. A direct impression of composed type forms containing type matter only, or a copy of that direct impression made by any method including the diffusion transfer method, and used exclusively for reproduction.</p> <p>(4) <u>Mechanical or Paste-up</u>. Preparation of copy to make it camera-ready with all type and design elements pasted on artboard or illustration board in exact position and containing instructions, either in the margins or on an overlay, for the</p>	<p>(a) Definitions.</p> <p>(1) <u>Special Printing Aid</u>. The term "special printing aid" means a reusable manufacturing aid which is used by a printer during the printing process. Examples of <u>special</u> printing aids include, but are not limited to, electrotypes, stereotypes, photoengravings, silk screens, steel dies, cutting dies, lithographic plates, artwork, film, single color or multicolor separation negatives, and flats.</p> <p>(2) <u>Printing Process</u>. The term "printing process" includes, but is not limited to, letterpress, flexography, gravure, offset lithography, reprography, screen printing, steel-die engraving, thermography, laser, inkjet, and photocopying.</p> <p>(3) <u>Reproduction Proof</u>. A direct impression of composed type forms containing type matter only, or a copy of that direct impression made by any method including the diffusion transfer method, and used exclusively for reproduction.</p> <p>(4) <u>Mechanical or Paste-up</u>. Preparation of copy to make it camera-ready with all type and design elements pasted on artboard or illustration board in exact position and containing instructions, either in the margins or on an overlay, for the</p>	<p>(a)(1) Add "special" to "printing aid" to specify that the provisions of this regulation apply to special printing aids. Also add "of unique utility to a particular customer" to distinguish a special printing aid from a normal printing aid.</p>

**Regulation 1541 – Printing and Related Arts**

*Comparison Between Staff's Version and the Installer's Proposed Language*

Current Regulatory Language	Staff's Proposed Regulatory Language	Industry's Proposed Regulatory Language	Staff Recommendation and Comments
	<p>platemaker. Also referred to as camera-ready art or camera-ready copy.</p> <p><u>(5) Desktop Publishing. Preparation of copy which is produced through the use of publishing software and computers. The transfer of the results of desktop publishing by remote telecommunications, as for example by a modem, or the seller's installation of the results of desktop publishing services onto the customer's computer with no transfer of possession of the storage media are not the sales of tangible personal property.</u></p>	<p>platemaker. Also referred to as camera-ready art or camera-ready copy.</p> <p><u>(5) Desktop Publishing. Preparation of copy which is produced through the use of publishing software and computers. The transfer of the results of desktop publishing by remote telecommunications, as for example by a modem, or the seller's installation of the results of desktop publishing services onto the customer's computer with no transfer of possession of the storage media are not the sales of tangible personal property. The creation and transfer, by the seller, of the original information created through the use of computers, only of the results of desktop publishing by computer disk or other electronic storage media shall be considered a custom computer program under section 6010.9.</u></p>	<p>(a)(5) Do not include last sentence of subdivision. Staff does not agree that the results of desktop publishing constitutes a custom computer program under section 6010.9.</p>

**Regulation 1541 – Printing and Related Arts**

*Comparison Between Staff's Version and the Installer's Proposed Language*

Current Regulatory Language	Staff's Proposed Regulatory Language	Industry's Proposed Regulatory Language	Staff Recommendation and Comments
<p>(b) Services. Tax applies to charges for services that are a part of the sale of tangible personal property to consumers, such as overtime and set-up charges and charges for die cutting, embossing, folding (except as provided in (c) below), and other binding operations. Tax applies regardless of whether or not the materials or any part thereof are furnished by the customers.</p> <p>NOTE: Moved to subdivision (b)(1) of staff's proposed regulatory language.</p>	<p>(b) Application of Tax. (1) Sales by Printers. Tax applies to charges for printing of tangible personal property for consumers, regardless of whether or not the paper and other materials are furnished by the consumer. The measure of tax is the total gross receipts or sales price of the sale with no deduction on account of (a) the cost of the raw materials or other components, (b) labor or service costs of any step in the process of producing, fabricating, processing, printing, or imprinting the tangible personal property, or (c) any other expenses or services that are a part of the sale. Services that are a part</p>	<p>(b) Application of Tax. (1) Sales by Printers. Tax applies to charges for printing of tangible personal property for consumers, regardless of whether or not the paper and other materials are furnished by the consumer. The measure of tax is the total gross receipts or sales price of the sale with no deduction on account of (a) the cost of the raw materials or other components, (b) labor or service costs of any step in the process of producing, fabricating, processing, printing, or imprinting the tangible personal property, or (c) any other expenses or services that are a part of the sale. Services that are a part</p>	

# **Regulation 1541 – Printing and Related Arts**

## *Comparison Between Staff's Version and the Installer's Proposed Language*

Current Regulatory Language	Staff's Proposed Regulatory Language	Industry's Proposed Regulatory Language	Staff Recommendation and Comments
	<p>of the sale of tangible personal property to consumers include, but are not limited to charges for overtime, set-up, die cutting, embossing, folding (except as provided in subdivision (f) below), and other binding operations. Printers may not deduct from the gross receipts of their sales of printed matter charges related to their typography work or the cost of typography or typesetting to them. Receipts attributable to such costs are includable in the measure of tax. Tax applies to a printer's <del>retail</del> sale of <u>special</u> printing aids as provided in subdivision (c).</p> <p>(2) Purchases by Printers. Printers are consumers of tangible personal property which is not sold prior to use or physically incorporated into the article to be sold. Tax applies to the sale of such property to the printer and also to any sale subsequent to its use by the printer. Such property includes, but is not limited to, machinery (e.g., printing presses, <del>and cameras</del>, electronic pre-press equipment, plate makers), office equipment, and printing aids. Printers, however, may purchase <u>special</u> printing aids for resale as explained in subdivision (c).</p>	<p>of the sale of tangible personal property to consumers include, but are not limited to charges for overtime, set-up, die cutting, embossing, folding (except as provided in subdivision (f) below), and other binding operations. Printers may not deduct from the gross receipts of their sales of printed matter charges related to their typography work or the cost of typography or typesetting to them. Receipts attributable to such costs are includable in the measure of tax. Tax applies to a printer's <del>retail</del> sale of <u>special</u> printing aids as provided in subdivision (c).</p> <p>(2) Purchases by Printers. Printers are consumers of tangible personal property which is not sold prior to use or physically incorporated into the article to be sold. Tax applies to the sale of such property to the printer and also to any sale subsequent to its use by the printer. Such property includes, but is not limited to, machinery (e.g., printing presses <del>and cameras</del>), <del>office equipment, and printing aids. Printers, however, may purchase printing aids for resale as, electronic pre-press equipment, plate makers), and equipment. The application of tax to special printing aids is explained in subdivision (c).</del></p>	<p>(b)(1) Deletion of the word "retail" is acceptable. Staff agrees that the word is not necessary.</p> <p>(b)(2) Add industry's examples of machinery. Add the word "special" in the last sentence for clarification.</p>

**Regulation 1541 – Printing and Related Arts**  
*Comparison Between Staff's Version and the Installer's Proposed Language*

Current Regulatory Language	Staff's Proposed Regulatory Language	Industry's Proposed Regulatory Language	Staff Recommendation and Comments
<p>(c) Mailing. Tax does not apply to charges for postage or for addressing for the purpose of mailing (by hand or by mechanical means), folding for the purpose of mailing, enclosing, sealing, preparing for mailing or mailing letters or other printed matters, provided such charges are stated separately on invoices and in the accounting records. Tax applies, however, to charges for envelopes.</p> <p>NOTE: Moved to subdivision (f) of staff's proposed regulatory language.</p>	<p>(c) <u>Special</u> Printing Aids.            (1) In General. Tax applies to the sale to printers of printing aids used in the printing process regardless that the printer may subsequently sell the printing aids to the person to whom the printed matter is sold. If, however, the contract of sale between the printer and the customer provides that title to printing aids which are of unique utility (<u>special printing aids</u>) to that customer passes to the customer prior to the physical use of the property in the printing process, the printer may purchase the <u>special</u> printing aids (or the raw materials if</p>	<p>(c) <u>Special</u> Printing Aids.  <del>—(1) In General. Tax applies to the sale to printers of printing aids used in the printing process regardless that the printer may subsequently sell the printing aids to the person to whom the printed matter is sold. If, however, the contract of sale between the printer and the customer provides that title to printing aids which are of unique utility to that customer passes to the customer prior to the physical use of the property in the printing process, the printer may purchase the printing aids (or the raw materials if the printing aids are fabricated by</del></p>	

**Regulation 1541 – Printing and Related Arts**

*Comparison Between Staff's Version and the Installer's Proposed Language*

Current Regulatory Language	Staff's Proposed Regulatory Language	Industry's Proposed Regulatory Language	Staff Recommendation and Comments
	<p>the <u>special</u> printing aids are fabricated by the printer) for resale. Tax then applies, unless otherwise exempt, to the printer's sale of the <u>special</u> printing aids to the customer but not also to the sale to the printer. If the contract provides that title to the <u>special</u> printing aids passes to the customer in this state prior to use, then a retail sale subject to tax occurs in this state even though the <u>special</u> printing aids may subsequently be shipped to a point outside this state. The sale of <u>special</u> printing aids located in this state and used here following that sale is not exempt as a sale in interstate commerce. The measure of tax includes any charges by the printer for the fabrication of raw materials into the <u>special</u> printing aids. Tax applies regardless of whether the invoice upon which the <u>special</u> printing aids are billed is for printed matter the sale of which is nontaxable, e.g., an exempt sale in interstate commerce, an exempt sale of a newspaper or periodical, or a sale for resale.</p> <p>(2) Sale Prior to Use. In determining whether the printer purchases property for resale to the customer, the terms of the contract with the customer, the custom or</p>	<p>the printer) for resale. Tax then applies, unless otherwise exempt, to the printer's sale of the printing aids to the customer but not also to the sale to the printer. If the contract provides that title to the printing aids passes to the customer in this state prior to use, then a retail sale subject to tax occurs in this state even though the printing aids may subsequently be shipped to a point outside this state. The sale of printing aids located in this state and used here following that sale is not exempt as a sale in interstate commerce. The measure of tax includes any charges by the printer for the fabrication of raw materials into the printing aids. Tax applies regardless of whether the invoice upon which the printing aids are billed is for printed matter the sale of which is nontaxable, e.g., an exempt sale in interstate commerce, an exempt sale of a newspaper or periodical, or a sale for resale.</p> <p><del>—(2) Sale Prior to Use. In determining whether the printer purchases property for resale to the customer, the terms of the contract with the customer, the custom or</del></p>	<p>(c)(2) Delete sentence in staff's proposed regulatory language as it conflicts with bright-line test contained in subdivision (c)(3).</p>

### Regulation 1541 – Printing and Related Arts

#### *Comparison Between Staff's Version and the Installer's Proposed Language*

Current Regulatory Language	Staff's Proposed Regulatory Language	Industry's Proposed Regulatory Language	Staff Recommendation and Comments
	<p><del>usage of the trade, and any other pertinent factors will be considered. If title to special printing aids passes to the printer's customer prior to use by the printer, such special printing aids may be purchased by the printer for resale. Tax, however, will apply to the printer's sale of the special printing aids unless otherwise nontaxable, e.g., purchased by the customer for resale. Passage of title prior to use by the printer must be substantiated as provided in subdivision (c)(3) below.</del></p> <p>(3) Proof of Sale Prior to Use. If facts demonstrate that the printer has sold special printing aids to the customer, it will be presumed, in the absence of evidence to the contrary, that the sale of the special printing aids occurred prior to use by the printer if:</p> <p>(A) the special printing aids are separately listed and priced either upon the same sales invoice for the printed matter or on a separate sales invoice;</p> <p>(B) a statement is included on the sales invoice for the printed matter that title to the special printing aids passes to the customer at the printer's place of business prior to use by the printer; or</p>	<p><del>usage of the trade, and any other pertinent factors will be considered. If title to printing aids passes to the printer's customer prior to use by the printer, such printing aids may be purchased by the printer for resale. Tax, however, will apply to the printer's sale of the printing aids unless otherwise nontaxable, e.g., purchased by the customer for resale. Passage of title prior to use by the printer must be substantiated as provided in subdivision (c)(3) below.</del></p> <p><del>—(3) Proof of Sale Prior to Use. If facts demonstrate that the printer has sold printing aids to the customer, it will be presumed, in the absence of evidence to the contrary, that the sale of the printing aids occurred prior to use by the printer if:</del></p> <p><del>—(A) the printing aids are separately listed and priced either upon the same sales invoice for the printed matter or on a separate sales invoice;</del></p> <p><del>—(B) a statement is included on the sales invoice for the printed matter that title to the printing aids passes to the customer at the printer's place of business prior to use by the printer; or</del></p>	



**Regulation 1541 – Printing and Related Arts**  
*Comparison Between Staff's Version and the Installer's Proposed Language*

Current Regulatory Language	Staff's Proposed Regulatory Language	Industry's Proposed Regulatory Language	Staff Recommendation and Comments
	<p>(C) the printer and the customer enter into an explicit agreement prior to the time the special printing aids are used, that title to the special printing aids will pass to the customer before they are used by the printer. One agreement for each customer is sufficient to satisfy this provision. Declarations of the parties after the transaction is completed are of little value as evidence because of their self-serving nature. The intention of the parties to transfer title prior to the use of the property should be clearly expressed in writing constituting a part of the contract of sale entered into by both parties prior to the use of the property.</p>	<p><del>—(C) the printer and the customer enter into an explicit agreement prior to the time the printing aids are used, that title to the printing aids will pass to the customer before they are used by the printer. One agreement for each customer is sufficient to satisfy this provision. Declarations of the parties after the transaction is completed are of little value as evidence because of their self-serving nature. The intention of the parties to transfer title prior to the use of the property should be clearly expressed in writing constituting a part of the contract of sale entered into by both parties prior to the use of the property.</del></p> <p><u>In recognition of the unique utility that special printing aids have to sales of printed material, and the need to avoid burdening businesses with unnecessary paperwork, the following presumptions shall apply. With respect to sales of printed material ultimately subject to sales tax, or sales to the U. S. Government, it</u></p> <p><u>(1) shall be presumed that the selling price of the printed material includes the selling price of the special printing aids and that title passed to the customer, irrespective of whether or not the printer</u></p>	<p>(c)(3)(C) Delete sentence in staff's proposed regulatory language as it does not add any clarity to prior sentence.</p> <p>(c) Make no change to staff's proposed language. Staff disagrees with industry's presumption of title transfer. The transfer of title to special printing aids should not be dependent on the form of the transaction. Staff believes that staff's proposed regulatory language, as amended, provides a clear, bright-line test for the application of tax to special printing aids. In addition, material received from industry indicates that the trade custom is for such material to remain the printer's exclusive property unless otherwise agreed to in writing.</p>

**Regulation 1541 – Printing and Related Arts**

*Comparison Between Staff's Version and the Installer's Proposed Language*

Current Regulatory Language	Staff's Proposed Regulatory Language	Industry's Proposed Regulatory Language	Staff Recommendation and Comments
		<p><u>separately itemizes the special printing aids. It shall be further presumed that the printer, or other reseller, discussed in the following paragraph, made no use of the special printing aids prior to their sale. Accordingly the printer may purchase the special printing aids for resale.</u></p> <p><u>"Ultimately subject to sales tax", means either the printers sale of the printed material and special printing aids is subject to sales tax or is an exempt sale to the U. S. Government, or if the printers sale of the printed material is for resale, a subsequent sale of the printed material and special printing aids is subject to California sales tax or is an exempt sale to the U. S. Government.</u></p> <p><u>(2) If a printer does not wish to sell special printing aids in connection with the sale of printed material ultimately subject to sales tax or sold to the U. S. Government, described in (c)(1) above, the following statement should be included on the sales invoice: "The selling price of the printed material does not include the transfer of title to the special printing aids." The printer would then be the owner and consumer of the special printing aids. Tax would apply to both the retail sale of the printed</u></p>	

**Regulation 1541 – Printing and Related Arts**

*Comparison Between Staff's Version and the Installer's Proposed Language*

Current Regulatory Language	Staff's Proposed Regulatory Language	Industry's Proposed Regulatory Language	Staff Recommendation and Comments
		<p>material and the cost to the printer of the special printing aids.</p> <p><u>(3) With respect to all other sales of printed material, as for example, sales in interstate commerce, sales of exempt newspapers or periodicals, or sales of exempt printed sales messages, it shall be presumed that the selling price of the printed material does not include the selling price of the special printing aids. Accordingly no portion of the selling price of the printed material is subject to sales tax and the printer shall be considered the owner and consumer of the special printing aids and tax would apply to the cost of the special printing aids to the printer irrespective of whether or not the printer lists the cost of the special printing aids on the invoice as one of the costs of producing the printed matter.</u></p> <p><u>(4) If a printer wishes to sell special printing aids in connection with all other sales of printed material, discussed in (c)(3) above, the printer shall separately list and price the special printing aids on the sales invoice and charge sales tax on the selling price of the special printing aids. The sales tax would apply to the printer's sale of the special printing aids regardless of whether</u></p>	

**Regulation 1541 – Printing and Related Arts**

*Comparison Between Staff's Version and the Installer's Proposed Language*

Current Regulatory Language	Staff's Proposed Regulatory Language	Industry's Proposed Regulatory Language	Staff Recommendation and Comments
		<p>the printed matter is exempt as, for example, a sale in interstate commerce or a sale of an exempt newspaper or periodical or a sale of an exempt printed sales message, unless the printer received a timely resale certificate which described the property to be purchased for resale as "special printing aids". It shall then be presumed that the printer sold and passed title to the special printing aids prior to use; accordingly the printer may purchase the special printing aids for resale.</p> <p>If a person issues a resale certificate to a printer for "special printing aids" in connection with all other sales of printed material, as discussed in the above paragraph, the retail sale of those special printing aids by the person issuing the resale certificate shall be subject to tax regardless of whether the printed material is exempt from tax as, for example, a sale in interstate commerce, a sale of an exempt newspaper or periodical, or a sale of an exempt printed sales message.</p> <p><u>(5) No other proof shall be required.</u></p>	

**Regulation 1541 – Printing and Related Arts**

*Comparison Between Staff's Version and the Installer's Proposed Language*

Current Regulatory Language	Staff's Proposed Regulatory Language	Industry's Proposed Regulatory Language	Staff Recommendation and Comments
<p>(d) Items Consumed By Printers. Printers are consumers of electrotypes, stereotypes, photoengravings, silk screens, steel dies, cutting dies, lithographic plates, artwork, single color or multicolor separation negatives, flats, and any other properties purchased for use in the preparation of printed matter to be sold, unless title to such materials is transferred by the printer to his customer before the materials are used. If title to the materials is not transferred from the printer to his customer before use, tax applies on the sale of the materials to the printer. Tax also applies on the sale of the materials following their use by the printer.</p> <p>NOTE: Moved to subdivisions (b)(1) and (2) of staff's proposed regulatory language.</p>	<p>(d) Color Separators. The application of tax to printers as explained in subdivisions (b) and (c) also applies to color separators. Color separators are consumers and not retailers of tangible personal property which is not sold prior to use or physically incorporated into the article to be sold. Examples of such property include, <u>but are not limited to</u>, filters and screens, trial</p>	<p>(d) Color Separators. The application of tax to printers as explained in subdivisions (b) and (c) also applies to color separators. Color separators are consumers and not retailers of tangible personal property which is not sold prior to use or physically incorporated into the article to be sold. Examples of such property include, <u>but are not limited to</u>, filters and screens, trial</p>	<p>(d) Staff agrees with addition of "but are not limited to," language.</p>

**Regulation 1541 – Printing and Related Arts**

*Comparison Between Staff's Version and the Installer's Proposed Language*

Current Regulatory Language	Staff's Proposed Regulatory Language	Industry's Proposed Regulatory Language	Staff Recommendation and Comments
	proofing materials, disposable lithographic plates, and developing chemicals which do not become incorporated into the article sold. <u>However, property that will be consumed in the printing process and that does not become physically incorporated into the article sold may not be purchased for resale. Separators and printers are the consumers of such property. Color separators and printers may purchase property for resale when title to such property passes to the customer prior to use by the color separator or the printer as described in subdivision (c). Charges to restore film to its original condition by a color separator are not subject to tax. Other changes to film constitute taxable fabrication labor.</u>	proofing materials, disposable lithographic plates, and developing chemicals which do not become incorporated into the article sold. Color separators may purchase property for resale when title to such property passes to the customer prior to use by the color separator or the printer as described in subdivision (c). <u>Alterations of film work by a color separator shall be considered charges for restoring property to its original condition and not subject to tax.</u>	<p>(d) Change language to clarify what items are consumed by printers and separators, and what items may be purchased for resale.</p> <p>(d) Accept industry's addition to end of this sentence but add "and printers" for clarity.</p> <p>(d) Change proposed language to make clear that this sentence does not cover taxable fabrication labor. Suggest "Charges to restore film to its original condition by a color separator is not subject to tax."</p>

**Regulation 1541 – Printing and Related Arts**

*Comparison Between Staff's Version and the Installer's Proposed Language*

Current Regulatory Language	Staff's Proposed Regulatory Language	Industry's Proposed Regulatory Language	Staff Recommendation and Comments
<p>(e) Items Purchased By Printers For Resale.</p> <p>(1) Definition. "Special printing aids" are those printing aids which are of unique utility to a particular customer and which are reusable. The term does not include printing plates made of materials which would preclude their being used more than once, such as photo-direct paper plates or electrostatic paper plates.</p> <p>(2) Application Of Tax. When printers purchase, or fabricate from raw materials purchased, special printing aids, including electrotypes, stereotypes, photoengravings, silk screens, steel dies, cutting dies, lithographic plates, artwork, single color or multicolor separation negatives, and flats, for customers who acquire title to the property upon delivery thereof to, or upon the completion of the fabrication thereof by, the printers and prior to use of the property, the printers will be regarded as purchasing such special printing aids or raw materials for resale to their customers. Tax applies to the printer's sales to the customer of the special printing aids. The measure of tax includes charges for the fabricating of raw materials into such special printing aids. Tax</p>			

**Regulation 1541 – Printing and Related Arts**

*Comparison Between Staff's Version and the Installer's Proposed Language*

Current Regulatory Language	Staff's Proposed Regulatory Language	Industry's Proposed Regulatory Language	Staff Recommendation and Comments
<p>applies regardless of whether the invoice upon which the special printing aids are billed is for printed matter the sale of which is exempt as a sale in interstate commerce, a sale of an exempt newspaper or periodical, a sale for resale, or otherwise. The sale of special printing aids located in this state and used here following the sale is not exempt as a sale in interstate commerce.</p> <p>(3) Standard Of Proof. It will be presumed, in the absence of evidence to the contrary, that special printing aids were sold by a printer to his customer prior to use if the properties are separately listed and priced either upon the same sales invoice upon which the printed matter is billed or on a separate sales invoice. The properties may be individually listed and priced or listed and priced by the quantity of each type of property sold.</p> <p>Without such a listing and pricing on a sales invoice, special printing aids will be regarded as having been sold prior to use only if it is established that the seller and the purchaser have, prior to the time that the special printing aids are used, explicitly agreed that title to such property will pass to the purchaser before the use</p>			



**Regulation 1541 – Printing and Related Arts**

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Current Regulatory Language	Staff's Proposed Regulatory Language	Industry's Proposed Regulatory Language	Staff Recommendation and Comments
<p>of the property. Declarations of the parties after the transaction is completed are of little value as evidence because of their self-serving nature. The intention of the parties to transfer title prior to the use of the property should be clearly expressed in writing constituting a part of the contract of sale entered into by both parties prior to the use of the property.</p> <p>(4) Items Sold By Printers For Resale. In an appropriate case, a customer of a printer may issue a resale certificate to a printer for special printing aids which the customer will resell prior to their use in the printing process. The printer's sales invoice should separately state the price for the printing aids. In addition, the resale certificate must include a general or specific description of the printing aids to be purchased for resale. The customer must establish to the satisfaction of the board that the sale took place prior to the use of the special printing aids in the printing process, in accordance with the test prescribed in paragraph (e)(3).</p> <p>NOTE: Moved to subdivisions (a), (b) and (c) of staff's proposed regulatory language.</p>			

# **Regulation 1541 – Printing and Related Arts**

## *Comparison Between Staff's Version and the Installer's Proposed Language*

Current Regulatory Language	Staff's Proposed Regulatory Language	Industry's Proposed Regulatory Language	Staff Recommendation and Comments
<p>(f) Composed Type.</p> <p>(1) In General. The composition of type, whether text type or display type, is the performance of a service, and tax does not apply to charges for such service, unless the service is a part of the sale of printed matter in which case tax applies to the gross receipts from the sale of the printed matter without any deduction for typography. Typographers are the consumers of materials, such as foundry type, typesetting machinery, metal forms, galleys, proofing paper, ink, film, and cleaners used in the performance of their service.</p>	<p>(e) Composed Type.</p> <p>(1) In General. Tax does not apply to the fabrication or transfer by a typographer or typesetter of composed type, or reproduction proofs of such composed type to printers to use in the preparation of printed matter. The composition of type is the performance of a service, and tax does not apply to charges for such service, unless that service is a part of the sale of printed matter. Tax applies to the gross receipts from the sale of printed matter without any deduction for the charge for typography. See subdivision (e)(3) below for the application of tax to charges for transfers of composed type combined with artwork. Typographers and typesetters are the consumers and not retailers of materials, such as typesetting machinery, metal forms, galleys, proofing paper, and cleaners which are used in the performance of their service and are consumers of materials transferred to their customers incidental to the performance of <u>nontaxable</u> typography or typesetting services. <u>Composed type includes type together with lined borders and plain, straight, fancy, or curved lines. Composed type includes tables consisting of text and lines.</u></p>	<p>(e) Composed Type.</p> <p>(1) In General. Tax does not apply to the fabrication or transfer by a typographer or typesetter of composed type, or reproduction proofs of such composed type to printers to use in the preparation of printed matter. The composition of type is the performance of a service, and tax does not apply to charges for such service, unless that service is a part of the sale of printed matter. Tax applies to the gross receipts from the sale of printed matter without any deduction for the charge for typography. See subdivision (e)(3) below for the application of tax to charges for transfers of composed type combined with artwork. Typographers and typesetters are the consumers and not retailers of materials, such as typesetting machinery, metal forms, galleys, proofing paper, and cleaners which are used in the performance of their service and are consumers of materials transferred to their customers incidental to the performance of <u>nontaxable</u> typography or typesetting services. <u>Composed type includes type together with lined borders and plain, straight, fancy, or curved lines. Composed type also includes charts, tables, graphs, and similar</u></p>	<p>(e)(1) Agree with industry's addition of the word "nontaxable".</p> <p>(e)(1) Agree with industry's first sentence regarding the type of lines.</p> <p>(e)(1) Do not include "Composed type also includes charts, tables,</p>

**Regulation 1541 – Printing and Related Arts**

*Comparison Between Staff's Version and the Installer's Proposed Language*

Current Regulatory Language	Staff's Proposed Regulatory Language	Industry's Proposed Regulatory Language	Staff Recommendation and Comments
<p>(2) Hot Metal Composition. Tax does not apply to the composing of type, whether the type is set by hand or by type composing machine, even though the typographer may transfer composed metal type to his customer. Further, tax does not apply to composition even though the typographer may transfer galley proofs to his customer or may transfer reproduction proofs of composed type in lieu of the composed metal type. The term "reproduction proof" as used in this paragraph includes a direct impression of composed type forms containing type matter only, provided the impression is to be used exclusively for reproduction. It is immaterial whether the proof is printed in black ink on white paper or on transparent acetate, in white ink on acetate or colored paper, or on material with pressure sensitive adhesive on the back. The term "reproduction proof" also includes proofs and negatives produced directly from composed type by means of such conversion systems as brighttype, verticon, scotchprint,</p>		<p><u>methods of providing information.</u></p>	<p>graphs, and similar methods of providing information." Staff does not agree that charts and graphs are composed type. These items are generally artwork.</p>

**Regulation 1541 – Printing and Related Arts**

*Comparison Between Staff's Version and the Installer's Proposed Language*

Current Regulatory Language	Staff's Proposed Regulatory Language	Industry's Proposed Regulatory Language	Staff Recommendation and Comments
cronapress, and converkal when the proofs and negatives will be used exclusively for reproduction. Transfers of such proofs and negatives by the typographer to his customer are not regarded as "sales" or "purchases"; therefore, such transfers do not give rise to tax liability. If the typographer makes a photographic copy or a plate from the reproduction proof and transfers the copy or plate to his customer, the entire charge made by the typographer to his customer is subject to tax including any portion of the charge attributable to the type composition service performed by the typographer, whether the charge is separately stated or not.			
	(2) Photocomposition (Including Phototypesetting and Computer Typesetting). Tax does not apply to the composing of type regardless of whether the type is composed by means of such simplified methods as standard typewriter, <u>desktop publishing</u> , Varityper or Justowriter; by means of photolettering or headlining machines; or by means of a photocomposition (including computer photocomposition)	(2) Photocomposition (Including Phototypesetting and Computer Typesetting). Tax does not apply to the composing of type regardless of whether the type is composed by means of such simplified methods as standard typewriter, <u>desktop publishing</u> , Varityper or Justowriter; by means of photolettering or headlining machines; or by means of a photocomposition (including computer photocomposition)	(e)(2) Agree with industry's addition of the term "desktop publishing."

**Regulation 1541 – Printing and Related Arts**

*Comparison Between Staff's Version and the Installer's Proposed Language*

Current Regulatory Language	Staff's Proposed Regulatory Language	Industry's Proposed Regulatory Language	Staff Recommendation and Comments
	<p>method. Tax does not apply to the transfer, whether temporary or permanent, of the direct product of the type composition service or copy thereof (e.g., typeset matter direct from the typesetting machine ready to be cut and pasted up for reproduction), if that product contains type matter only (see subdivision (e)(3) for the application of tax when artwork is included), whether that product is a paper or film (negative or positive) product, provided the product or copy is to be used exclusively for reproduction.</p> <p>The transfer of camera-ready copy containing text only in the form of a paste-up, mechanical, or assembly, or a camera-ready reproduction of such, is the transfer of composed type and the charge made by the typographer or typesetter to his or her customer for such is not subject to tax. <del>A transfer of type matter combined with artwork, in the form of a paste-up, mechanical, assembly, or camera-ready copy, or of a flat (including an assemblage of page negatives or positives which contain type matter only), or the transfer of a photoreproduction (including film "plates") of such properties is subject to tax without any deduction on account of the cost or expense of</del></p>	<p>method. Tax does not apply to the transfer, whether temporary or permanent, of the direct product of the type composition service or copy thereof (e.g., typeset matter direct from the typesetting machine ready to be cut and pasted up for reproduction), if that product contains type matter only (see subdivision (e)(3) for the application of tax when artwork is included), whether that product is a paper or film (negative or positive) product, provided the product or copy is to be used exclusively for reproduction.</p> <p>The transfer of camera-ready copy containing text only in the form of a paste-up, mechanical, or assembly, or a camera-ready reproduction of such, is the transfer of composed type and the charge made by the typographer or typesetter to his or her customer <del>for such</del> is not subject to tax. A transfer of type matter combined with artwork, in the form of a paste-up, mechanical, assembly, or camera-ready copy, or of a flat (including an assemblage of page negatives or positives which contain type matter only), or the transfer of a photoreproduction (including film "plates") of such properties is subject to tax without any deduction on account of the cost or expense of</p>	<p>(e)(2) Delete sentence as unnecessary language. Replace with sentence referring reader to (e)(3).</p>

**Regulation 1541 – Printing and Related Arts**

*Comparison Between Staff's Version and the Installer's Proposed Language*

Current Regulatory Language	Staff's Proposed Regulatory Language	Industry's Proposed Regulatory Language	Staff Recommendation and Comments
	<p><del>typography. For transactions in which there is a transfer of type matter combined with artwork, see subdivision (e)(3). If the transferred property includes a number of pages, some containing text and artwork and some containing text only, tax applies to charges for any page which includes artwork while no tax applies to charges for any page that includes only text. Tax does not apply to the transfer of a direct photoreproduction of type composed by means of a photolettering or headlining machine or other similar device.</del></p> <p>Camera-ready copy which is produced through the use of desktop publishing software and a personal computer is nontaxable composed type provided it does not contain artwork.</p> <p>Transfers of plates and mats for use in the printing process which are produced using composed type are subject to tax, and tax applies to the entire charge made to the customer including any portion of the charge attributable to the type composition service, whether that charge is separately stated or not. Transfers of engraved printing plates and duplicate plates such as electrotypes, plastic plates, rubber plates, and other plates used in</p>	<p><del>typography, unless the artwork is de minimis. If the transferred property includes text and artwork, tax applies to the artwork, unless the artwork is de minimis-number of pages, some containing text and artwork and some containing text only, tax applies to charges for any page which includes artwork while no tax applies to charges for any page that includes only text. Tax does not apply to the transfer of a direct photoreproduction of type composed by means of a photolettering or headlining machine or other similar device.</del></p> <p>Camera-ready copy which is produced through the use of desktop publishing software and a personal computer is nontaxable composed type provided it does not contain artwork <del>which is not de minimis</del>.</p> <p>Transfers of plates and mats for use in the printing process which are produced using composed type are subject to tax, and tax applies to the entire charge made to the customer including any portion of the charge attributable to the type composition service, whether that charge is separately stated or not. Transfers of engraved printing plates and duplicate plates such as electrotypes, plastic plates, rubber plates, and other plates used in</p>	<p>(e)(2) Delete sentence from this section and move to (e)(3).</p> <p>(e) All proposed language regarding the concept of de minimis artwork is unacceptable. Staff does not agree with industry's proposal that artwork, excluding clip art and computer generated art, shall be considered de minimis if the artwork occupies 10 percent or less of the printed material, containing text. Staff's proposed regulatory language provides a much simpler approach by assessing tax on each page of text containing any artwork. Industry's proposal would necessitate the measurement of artwork versus text to calculate whether the artwork contained in the printed matter exceeded the 10 percent threshold.</p>

**Regulation 1541 – Printing and Related Arts**  
*Comparison Between Staff's Version and the Installer's Proposed Language*

Current Regulatory Language	Staff's Proposed Regulatory Language	Industry's Proposed Regulatory Language	Staff Recommendation and Comments
<p>(3) Cold Type Composition (Including Phototypesetting And Computer Typesetting). Tax does not apply to the composing of type regardless of whether the type is composed by means of such simplified cold type methods as standard typewriter, Varityper or Justowriter, by means of photolettering or headlining machines, or by means of a photocomposition (including computer photocomposition) method. Tax does not apply to the transfer, whether temporary or permanent, of (a) the direct product of the type composition service containing type matter only, whether that product is a paper or film (negative or positive) product or (b)</p>	<p>letterpress printing are subject to tax. Similarly, transfers of exposed presensitized, wipe-on, deep-etch, bi-metal and other plates used in offset lithography or of exposed plates produced by a photo-direct method, do not qualify as transfers of reproduction proofs of composed type and are subject to tax. A transfer of gelatin coated film to be transferred to fine mesh silk in the silk-screening process is subject to tax.</p>	<p>letterpress printing are subject to tax. Similarly, transfers of exposed presensitized, wipe-on, deep-etch, bi-metal and other plates used in offset lithography or of exposed plates produced by a photo-direct method, do not qualify as transfers of reproduction proofs of composed type and are subject to tax. A transfer of gelatin coated film to be transferred to fine mesh silk in the silk-screening process is subject to tax.</p>	

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*Comparison Between Staff's Version and the Installer's Proposed Language*

Current Regulatory Language	Staff's Proposed Regulatory Language	Industry's Proposed Regulatory Language	Staff Recommendation and Comments
a direct copy, whether on paper or film (negative or positive) of the product, provided the product or copy is to be used exclusively for reproduction. Transfers of plates made from the properties referred to in the preceding sentence are subject to tax, and tax applies to the entire charge made to the customer including any portion of the charge attributable to the type composition service, whether the charge is separately stated or not. If the typographer transfers type matter combined with artwork, in the form of a paste-up, mechanical, assembly, or camera-ready copy, or a reproduction of the paste-up, mechanical, assembly, or camera-ready copy, the entire charge made by the typographer to his customer is subject to tax, including any portion of the charge attributable to the type composition service performed by the typographer, whether the charge is separately stated or not. Tax does not apply to the transfer of a direct photoreproduction of type composed by means of a photolettering or headlining machine or other similar device.			



## Regulation 1541 – Printing and Related Arts

### Comparison Between Staff's Version and the Installer's Proposed Language

Current Regulatory Language	Staff's Proposed Regulatory Language	Industry's Proposed Regulatory Language	Staff Recommendation and Comments
	<p>(3) Artwork. Artwork is not composed type. The term “artwork” includes, but is not limited to, illustrations (e.g., drawings, diagrams, halftones, or color images), photographs, drawings, paintings, handlettering, and computer generated artwork. The transfer of artwork is subject to tax whether or not it is included with the transfer of composed type. Similarly, the transfer of composed type together with artwork is subject to tax. Transfers of photographic reproductions of such materials also are subject to tax. The entire charge by a typographer for transfers of artwork combined with composed type is subject to tax, including any portion of the charge attributable to the type composition service, regardless of whether the charge for the type composition service is separately stated. <u>However, if the transferred property includes a number of pages, some containing text and artwork and some containing text only, tax applies to charges for any page which includes artwork while no tax applies to charges for any page that includes only text.</u></p>	<p>(3) Artwork. Artwork, <u>unless de minimis</u>, is not composed type. The term “artwork” includes, but is not limited to, illustrations (e.g., drawings, diagrams, halftones, or color images), photographs, drawings, paintings, handlettering, and computer generated artwork. The transfer of artwork is subject to tax whether or not it is included with the transfer of composed type, <u>unless the artwork is de minimis</u>. Similarly, the transfer of composed type together with artwork is subject to tax <u>unless the artwork is de minimis</u>. Transfers of photographic reproductions of such materials also are subject to tax. <u>If the artwork is not de minimis,</u> tThe entire charge by a typographer for transfers of artwork combined with composed type is subject to tax, including any portion of the charge attributable to the type composition service, regardless of whether the charge for the type composition service is separately stated.</p>	<p>(e) (3) Staff disagrees that artwork is taxable unless de minimis. The transfer of artwork is subject to tax unless otherwise exempt.</p> <p>(e)(3) Moved sentence from (e)(2) and added “However” for clarity.</p>

**Regulation 1541 – Printing and Related Arts**

*Comparison Between Staff's Version and the Installer's Proposed Language*

Current Regulatory Language	Staff's Proposed Regulatory Language	Industry's Proposed Regulatory Language	Staff Recommendation and Comments
<p>(4) Illustrations. Illustrations are not composed type. Transfers of photographs, drawings, paintings, handlettering, and other artwork are subject to tax. Transfers of photographic reproductions of such materials are subject to tax. Where a hot metal typographer transfers a proof which includes an illustration, the transfer is not regarded as a transfer of a reproduction proof of composed type under paragraph (f)(2) above.</p> <p>(5) Paste-Ups, Mechanicals, Assemblies, Camera-Ready Copy, Flats, Photoengravings, Printing Plates. A transfer of type matter combined with artwork, in the form of a paste-up, mechanical, assembly, or camera-ready copy, or of a flat (including an assemblage of page negatives or positives which contain type matter only), or the transfer of a photoreproduction (including film "plates") of such properties is subject to tax without any deduction on account of the cost or expense of typography. A transfer of gelatin coated film to be transferred to fine mesh silk in the silk-screening</p>		<p><u>(4) De Minimis Artwork. All clip art and computer generated art that is incorporated, through the printing process, into printed material which contains text shall be considered de minimis artwork. All other artwork shall be considered de minimis if the artwork occupies 10% or less of the printed material, containing text, which is produced through the printing process.</u></p>	<p>(e)(4) Staff does not agree that clip art and computer generated art is de minimis artwork.</p>

**Regulation 1541 – Printing and Related Arts**

*Comparison Between Staff's Version and the Installer's Proposed Language*

Current Regulatory Language	Staff's Proposed Regulatory Language	Industry's Proposed Regulatory Language	Staff Recommendation and Comments
<p>process is subject to tax. Transfers of engraved printing plates and duplicate plates such as electrotypes, plastic plates, rubber plates, and other plates used in letterpress printing are subject to tax. Similarly, transfers of exposed presensitized, wipe-on, deep-etch, bi-metal and other plates used in offset lithography or of exposed plates produced by a photo-direct method, do not qualify as transfers of reproduction proofs of composed type.</p> <p>(6) Typography Service A Part Of The Sale Of Printed Matter. Printers may not deduct from the gross receipts of their sales of printed matter charges related to their typography work or the cost of typography to them. Receipts attributable to such costs are includable in the measure of tax.</p> <p>NOTE: Moved to subdivision (e) of staff's proposed regulatory language.</p>			

**Regulation 1541 – Printing and Related Arts**

*Comparison Between Staff's Version and the Installer's Proposed Language*

Current Regulatory Language	Staff's Proposed Regulatory Language	Industry's Proposed Regulatory Language	Staff Recommendation and Comments
	(f) Mailing. Tax does not apply to charges for postage or for addressing for the purpose of mailing (by hand or by mechanical means), folding for the purpose of mailing, enclosing, sealing, preparing for mailing or mailing letters or other printed matters, provided such charges are stated separately on invoices and in the accounting records. Tax applies, however, to charges for envelopes.	(f) Mailing. Tax does not apply to charges for postage or for addressing for the purpose of mailing (by hand or by mechanical means), folding for the purpose of mailing, enclosing, sealing, preparing for mailing or mailing letters or other printed matters, provided such charges are stated separately on invoices and in the accounting records. Tax applies, however, to charges for envelopes.	(f) No change to staff's proposed language. Industry agrees.
(g) Impressed Mats. (1) Definition. "Impressed mat" means a paper matrix used in the stereotype method of making duplicate printing plates upon which an impression of type or type and cuts (linecuts and halftones) has been made. The term does not include photoreproductions of paste-ups, mechanicals, assemblies, flats or camera-ready copy. (2) General. The fabrication or transfer of an impressed mat is not regarded as a sale when the fabrication is for, and the transfer is to, a printer or publisher for use in printing. The printer or publisher in such a case is not regarded as the consumer of the mat.			

**Regulation 1541 – Printing and Related Arts**

*Comparison Between Staff's Version and the Installer's Proposed Language*

Current Regulatory Language	Staff's Proposed Regulatory Language	Industry's Proposed Regulatory Language	Staff Recommendation and Comments
<p>(3) Advertising Service Companies (Cut And Copy Service). These companies contract for a fixed sum per month (usually based on population or circulation) to supply to publishers an advertising book service, consisting of a book or books of printed advertising illustrations which the publishers could use. The books are accompanied by a complete set of mats which the publisher may use after he has made the selection from the display book. The service also includes suggested ad combination layouts, copy and fashion information.</p> <p>The advertising service companies are the consumers of the mats and books. Accordingly, tax applies with respect to the sale to the companies of the mats or books, or if the companies prepare the mats or books, to the sale of the materials becoming a component part of the mats or books.</p> <p>(4) Mats Furnished By Syndicators Of Columns And Strips. This type of mat refers to comic strip drawings, syndicated columns, syndicated photos, and the like. These mats are furnished by columnists or syndicates to the publisher. The columnist or syndicate is the</p>			

**Regulation 1541 – Printing and Related Arts**

*Comparison Between Staff's Version and the Installer's Proposed Language*

Current Regulatory Language	Staff's Proposed Regulatory Language	Industry's Proposed Regulatory Language	Staff Recommendation and Comments
<p>consumer of the mats. Accordingly, tax applies with respect to the sale of the mats to the columnist or syndicate.</p> <p>(5) Mats Furnished By Advertisers Or Advertising Agencies. Advertisers are consumers of mats furnished newspapers for advertising purposes. Tax applies, accordingly, to the sale of the mats to the advertisers. If the advertiser acts through an advertising agency which acquires the mats for his account, tax applies to the sale of the mats to the agency as agent of the advertiser. If the advertising agency acts as principal in obtaining and furnishing mats to advertisers, the sale to the agency is exempt as a sale for resale, and the sale by the agency is taxable.</p> <p>(6) Publicity Mats. These mats represent pictures of a person in the public eye, who obtains mats for the purpose of providing newspapers with a ready means of preparing a cut of his photograph. The person purchasing the mats is the consumer, and tax applies to the sale of the mats to him.</p> <p>(7) Raw Mat Materials Purchased By Newspaper Printers Or Publishers. When a newspaper printer or publisher purchases blank mat stock which he makes into mats</p>			

# **Regulation 1541 – Printing and Related Arts**

## *Comparison Between Staff's Version and the Installer's Proposed Language*

Current Regulatory Language	Staff's Proposed Regulatory Language	Industry's Proposed Regulatory Language	Staff Recommendation and Comments
<p>from engravings or type for use in the newspaper, he is the consumer of such stock and tax applies to the sale of the stock to him.</p> <p>(8) Sales Of Mat Accessories. Sales to publishers of accessories or equipment necessary to the making of mats, e.g., chase holders and casting material for curved plates, are sales to consumers and are subject to tax.</p> <p>(9) Typography Or Cuts And Mat Service. Tax applies on sales of mats to consumers. Tax applies to the total charges made for the mats, including charges attributable to costs for typography, cuts, and other manufacturing aids necessary to produce and fabricate the mats, even though such aids do not become a component part of the mats.</p> <p>NOTE: Deleted as obsolete.</p>	<p>(g) Signs, Show Cards, and Posters. Tax applies to retail sales of signs, show cards, and posters, and to charges for painting signs, show cards, and posters whether the materials are furnished by the painter or by the customer. Tax does not apply to charges for painting or lettering on real property. The painter or letterer is the consumer of the materials used in</p>	<p>(g) Signs, Show Cards, and Posters. Tax applies to retail sales of signs, show cards, and posters, and to charges for painting signs, show cards, and posters whether the materials are furnished by the painter or by the customer. Tax does not apply to charges for painting or lettering on real property. The painter or letterer is the consumer of the materials used in</p>	<p>(g) No change to staff's proposed language. Industry agrees.</p>

**Regulation 1541 – Printing and Related Arts**  
*Comparison Between Staff's Version and the Installer's Proposed Language*

Current Regulatory Language	Staff's Proposed Regulatory Language	Industry's Proposed Regulatory Language	Staff Recommendation and Comments
<p>(h) Duplication By Typewriters. Tax applies to charges for duplicating by means of two or more typewriters so connected as to operate simultaneously. Tax also applies to charges for duplicating by means of one or more typewriters operated from a stencil, tape or other mechanical device. Tax does not apply to separately stated charges for individually typing by hand the salutation or inside address or a personalized reference onto such mechanically duplicated letters. Tax does not apply to separately stated charges for addressing for mailing, whether the addressing is done by hand or by mechanical means.</p> <p>NOTE: Deleted as obsolete.</p>	<p>such work, and tax applies with respect to the sale of such property to him.</p> <p><del>(h) Examples of Specific Application of Tax:</del>  <del>—(1) A printer prepares camera-ready copy and uses it to print equipment operating manuals which are sold to the seller of the equipment. The operating manuals are sold without tax for resale. The printer retains title to and possession of the camera-ready copy and eventually discards it. The printer makes a separate charge for the camera-ready copy to the customer. Since the camera-ready copy is not sold to the customer, the charge for it is regarded as part of the charge for the manuals. Since the sale of the manuals is not subject to tax, tax does not apply to the separate charge for the camera-ready copy. The printer is the consumer of, and tax applies to the sale to the printer of, materials used to prepare the camera-ready art.</del>  <del>—(2) A publishing company has manuscripts put into the publisher's format by an outside designer. The film-house prepares the manuscript and illustration for printing and the film is given to a printer for</del></p>	<p>such work, and tax applies with respect to the sale of such property to him.</p> <p><del>(h) Examples of Specific Application of Tax:</del>  <del>—(1) A printer prepares camera-ready copy and uses it to print equipment operating manuals which are sold to the seller of the equipment. The operating manuals are sold without tax for resale. The printer retains title to and possession of the camera-ready copy and eventually discards it. The printer makes a separate charge for the camera-ready copy to the customer. Since the camera-ready copy is not sold to the customer, the charge for it is regarded as part of the charge for the manuals. Since the sale of the manuals is not subject to tax, tax does not apply to the separate charge for the camera-ready copy. The printer is the consumer of, and tax applies to the sale to the printer of, materials used to prepare the camera-ready art.</del>  <del>—(2) A publishing company has manuscripts put into the publisher's format by an outside designer. The film-house prepares the manuscript and illustration for printing and the film is given to a printer for</del></p>	<p>(h) Based on industry concerns, staff agrees to delete the subdivision. Although, the examples provided additional guidance, staff believes the staff proposed regulatory language is clear and will be understood by the public.</p>



**Regulation 1541 – Printing and Related Arts**  
*Comparison Between Staff's Version and the Installer's Proposed Language*

Current Regulatory Language	Staff's Proposed Regulatory Language	Industry's Proposed Regulatory Language	Staff Recommendation and Comments
	<p><del>completion of the process of booklet production. The designer's work consists of only typography with straight line borders around areas designated for illustrations.</del></p> <p><del>Composed type together with line borders of plain or straight lines is "composed type". Therefore, tax does not apply to the designer's charge for a product in the form of a layout consisting of only composted type and boxes of plain lines with notations within the boxes to designate position and sizes of illustrations.</del></p> <p><del>-(3) A printer prints business cards, letterheads, brochures and similar property for a customer who provides computer disks on which is embodied the artwork that will be reproduced on a printing plate. Because the printer does not have the special devices to create a paper or film product, the printer manipulates the data and sends it by modem to a typesetting shop. The typesetting shop outputs the information to either film or paper and sends that product to the printer who uses the film or paper to make a printing plate.</del></p> <p><del>If the typesetting shop transfers a film or paper product which contains only composition of type with no</del></p>	<p><del>completion of the process of booklet production. The designer's work consists of only typography with straight line borders around areas designated for illustrations.</del></p> <p><del>Composed type together with line borders of plain or straight lines is "composed type". Therefore, tax does not apply to the designer's charge for a product in the form of a layout consisting of only composted type and boxes of plain lines with notations within the boxes to designate position and sizes of illustrations.</del></p> <p><del>-(3) A printer prints business cards, letterheads, brochures and similar property for a customer who provides computer disks on which is embodied the artwork that will be reproduced on a printing plate. Because the printer does not have the special devices to create a paper or film product, the printer manipulates the data and sends it by modem to a typesetting shop. The typesetting shop outputs the information to either film or paper and sends that product to the printer who uses the film or paper to make a printing plate.</del></p> <p><del>If the typesetting shop transfers a film or paper product which contains only composition of type with no</del></p>	

**Regulation 1541 – Printing and Related Arts**  
*Comparison Between Staff's Version and the Installer's Proposed Language*

Current Regulatory Language	Staff's Proposed Regulatory Language	Industry's Proposed Regulatory Language	Staff Recommendation and Comments
	<p>logos or other illustrations, tax does not apply to its charge to the printer. If the film or paper product contains type matter combined with artwork, tax applies to the charge without any deduction on account of the charge for typography. If multiple pages are provided, some of which contain type matter only and others which include illustrations, tax applies to the portion of the charge related to the pages with illustrations.</p> <p><del>—(4) A printer's customer issues a purchase order specifically for printing aids or, on the purchase order for the printed matter, itemizes or otherwise specifies the particular printing aids which will be required by the printer to create the printed matter desired by the customer. The printer obtains such printing aids pursuant to the customer's specific order and bills the printing aids to the customer separately from the billing for the printed matter. The printer either delivers the printing aids to the customer or holds them as bailee for the customer. Under these circumstances, it will be presumed that the printer acquired the property on behalf of the customer or for immediate resale to him or her. Tax applies to the sale of the printing aids to the customer but not also to the</del></p>	<p>logos or other illustrations, tax does not apply to its charge to the printer. If the film or paper product contains type matter combined with artwork, tax applies to the charge without any deduction on account of the charge for typography. If multiple pages are provided, some of which contain type matter only and others which include illustrations, tax applies to the portion of the charge related to the pages with illustrations.</p> <p><del>—(4) A printer's customer issues a purchase order specifically for printing aids or, on the purchase order for the printed matter, itemizes or otherwise specifies the particular printing aids which will be required by the printer to create the printed matter desired by the customer. The printer obtains such printing aids pursuant to the customer's specific order and bills the printing aids to the customer separately from the billing for the printed matter. The printer either delivers the printing aids to the customer or holds them as bailee for the customer. Under these circumstances, it will be presumed that the printer acquired the property on behalf of the customer or for immediate resale to him or her. Tax applies to the sale of the printing aids to the customer but not also to the</del></p>	

**Regulation 1541 – Printing and Related Arts**

*Comparison Between Staff's Version and the Installer's Proposed Language*

Current Regulatory Language	Staff's Proposed Regulatory Language	Industry's Proposed Regulatory Language	Staff Recommendation and Comments
<p>(i) Signs, Show Cards, And Posters. Tax applies to retail sales of signs, show cards, and posters, and to charges for painting signs, show cards, and posters whether the materials are furnished by the painter or by the customer. Tax does not apply to charges for painting or lettering on real property. The painter or letterer is the consumer of the materials used in such work, and tax applies with respect to the sale of such property to him.</p> <p>NOTE: Moved to subdivision (g) of staff's proposed regulatory language.</p>	<p><del>purchase of the printing aids by the printer.</del></p>	<p><del>purchase of the printing aids by the printer.</del></p>	<p>1541mat3.doc</p>

## Regulation 1541. Printing and Related Arts.

## (a) Definitions.

(1) Special Printing Aid. The term "special printing aid" means a reusable manufacturing aid which is used by a printer during the printing process and is of unique utility to a particular customer. Examples of special printing aids include, but are not limited to, electrotypes, stereotypes, photoengravings, silk screens, steel dies, cutting dies, lithographic plates, artwork, film, single color or multicolor separation negatives, and flats.

(2) Printing Process. The term "printing process" includes, but is not limited to, letterpress, flexography, gravure, offset lithography, reprography, screen printing, steel-die engraving, thermography, laser, inkjet, and photocopying.

(3) Reproduction Proof. A direct impression of composed type forms containing type matter only, or a copy of that direct impression made by any method including the diffusion transfer method, and used exclusively for reproduction.

(4) Mechanical or Paste-up. Preparation of copy to make it camera-ready with all type and design elements pasted on artboard or illustration board in exact position and containing instructions, either in the margins or on an overlay, for the platemaker. Also referred to as camera-ready art or camera-ready copy.

(5) Desktop Publishing. Preparation of copy which is produced through the use of publishing software and computers. The transfer of the results of desktop publishing by remote telecommunications, as for example by a modem, or the seller's installation of the results of desktop publishing services onto the customer's computer with no transfer of possession of the storage media are not the sales of tangible personal property.

## (b) Application of Tax.

(1) Sales by Printers. Tax applies to charges for printing of tangible personal property for consumers, regardless of whether or not the paper and other materials are furnished by the consumer. The measure of tax is the total gross receipts or sales price of the sale with no deduction on account of (a) the cost of the raw materials or other components, (b) labor or service costs of any step in the process of producing, fabricating, processing, printing, or imprinting the tangible personal property, or (c) any other expenses or services that are a part of the sale. Services that are a part of the sale of tangible personal property to consumers include, but are not limited to charges for overtime, set-up, die cutting, embossing, folding (except as provided in subdivision (f) below), and other binding operations. Printers may not deduct from the gross receipts of their sales of printed matter charges related to their typography work or the cost of typography or typesetting to them. Receipts attributable to such costs are includable in the measure of tax.

Tax applies to a printer's ~~retail~~ sale of special printing aids as provided in subdivision (c).

(2) Purchases by Printers. Printers are consumers of tangible personal property which is not sold prior to use or physically incorporated into the article to be sold. Tax applies to the sale of such property to the printer and also to any sale subsequent to its use by the printer. Such property includes, but is not limited to, machinery (e.g., printing presses, ~~and~~ cameras, electronic pre-press equipment, plate makers), office equipment, and printing aids. Printers, however, may purchase special printing aids for resale as explained in subdivision (c).

(c) Special Printing Aids.

(1) In General. Tax applies to the sale to printers of printing aids used in the printing process regardless that the printer may subsequently sell the printing aids to the person to whom the printed matter is sold. If, however, the contract of sale between the printer and the customer provides that title to printing aids which are of unique utility (special printing aids) to that customer passes to the customer prior to the physical use of the property in the printing process, the printer may purchase the special printing aids (or the raw materials if the special printing aids are fabricated by the printer) for resale. Tax then applies, unless otherwise exempt, to the printer's sale of the special printing aids to the customer but not also to the sale to the printer.

If the contract provides that title to the special printing aids passes to the customer in this state prior to use, then a retail sale subject to tax occurs in this state even though the special printing aids may subsequently be shipped to a point outside this state. The sale of special printing aids located in this state and used here following that sale is not exempt as a sale in interstate commerce. The measure of tax includes any charges by the printer for the fabrication of raw materials into the special printing aids. Tax applies regardless of whether the invoice upon which the special printing aids are billed is for printed matter the sale of which is nontaxable, e.g., an exempt sale in interstate commerce, an exempt sale of a newspaper or periodical, or a sale for resale.

(2) Sale Prior to Use. ~~In determining whether the printer purchases property for resale to the customer, the terms of the contract with the customer, the custom or usage of the trade, and any other pertinent factors will be considered.~~ If title to special printing aids passes to the printer's customer prior to use by the printer, such special printing aids may be purchased by the printer for resale. Tax, however, will apply to the printer's sale of the special printing aids unless otherwise nontaxable, e.g., purchased by the customer for resale. Passage of title prior to use by the printer must be substantiated as provided in subdivision (c)(3) below.

(3) Proof of Sale Prior to Use. If facts demonstrate that the printer has sold special printing aids to the customer, it will be presumed, in the absence of evidence to the contrary, that the sale of the special printing aids occurred prior to use by the printer if:

(A) the special printing aids are separately listed and priced either upon the same sales invoice for the printed matter or on a separate sales invoice;

(B) a statement is included on the sales invoice for the printed matter that title to the special printing aids passes to the customer at the printer's place of business prior to use by the printer; or

(C) the printer and the customer enter into an explicit agreement prior to the time the special printing aids are used, that title to the special printing aids will pass to the customer before they are used by the printer. ~~One agreement for each customer is sufficient to satisfy this provision.~~ Declarations of the parties after the transaction is completed are of little value as evidence because of their self-serving nature. The intention of the parties to transfer title prior to the use of the property should be clearly expressed in writing constituting a part of the contract of sale entered into by both parties prior to the use of the property.

(d) Color Separators. The application of tax to printers as explained in subdivisions (b) and (c) also applies to color separators. Color separators are consumers and not retailers of tangible personal property which is not sold prior to use or physically incorporated into the article to be sold. Examples of such property include, but are not limited to, filters and screens, trial proofing materials, disposable lithographic plates, and developing chemicals which do not become incorporated into the article sold. However, property that will be consumed in the printing process and that does not become physically incorporated into the article sold may not be purchased for resale. Separators and printers are the consumers of such property. Color separators and printers may purchase property for resale when title to such property passes to the customer prior to use by the color separator or the printer as described in subdivision (c). Charges to restore film to its original condition by a color separator are not subject to tax. Other charges to film constitute taxable fabrication labor.

(e) Composed Type.

(1) In General. Tax does not apply to the fabrication or transfer by a typographer or typesetter of composed type, or reproduction proofs of such composed type to printers to use in the preparation of printed matter. The composition of type is the performance of a service, and tax does not apply to charges for such service, unless that service is a part of the sale of printed matter. Tax applies to the gross receipts from the sale of printed matter without any deduction for the charge for typography. See subdivision (e)(3) below for the application of tax to charges for transfers of composed type combined with artwork.

Typographers and typesetters are the consumers and not retailers of materials, such as typesetting machinery, metal forms, galleys, proofing paper, and cleaners which are used in the performance of their service and are consumers of materials transferred to their customers incidental to the performance of nontaxable typography or typesetting services. Composed type includes type together with lined borders and plain, straight, fancy, or curved lines. Composed type includes tables consisting of text and lines.

(2) Photocomposition (Including Phototypesetting and Computer Typesetting). Tax does not apply to the composing of type regardless of whether the type is composed by means of such simplified methods as standard typewriter, desktop publishing, Varsityper or Justowriter; by means of photolettering or headlining machines; or by means of a photocomposition (including computer photocomposition) method. Tax does not apply to the transfer, whether temporary or permanent, of the direct product of the type composition service or copy thereof (e.g., typeset matter direct from the typesetting

machine ready to be cut and pasted up for reproduction), if that product contains type matter only (see subdivision (e)(3) for the application of tax when artwork is included), whether that product is a paper or film (negative or positive) product, provided the product or copy is to be used exclusively for reproduction.

The transfer of camera-ready copy containing text only in the form of a paste-up, mechanical, or assembly, or a camera-ready reproduction of such, is the transfer of composed type and the charge made by the typographer or typesetter to his or her customer for such is not subject to tax. ~~A transfer of type matter combined with artwork, in the form of a paste-up, mechanical, assembly, or camera-ready copy, or of a flat (including an assemblage of page negatives or positives which contain type matter only), or the transfer of a photoreproduction (including film "plates") of such properties is subject to tax without any deduction on account of the cost or expense of typography. For transactions in which there is a transfer of type matter combined with artwork, see subdivision (e)(3).~~ If the transferred property includes a number of pages, some containing text and artwork and some containing text only, tax applies to charges for any page which includes artwork while no tax applies to charges for any page that includes only text. Tax does not apply to the transfer of a direct photoreproduction of type composed by means of a photolettering or headlining machine or other similar device.

Camera-ready copy which is produced through the use of desktop publishing software and a personal computer is nontaxable composed type provided it does not contain artwork.

Transfers of plates and mats for use in the printing process which are produced using composed type are subject to tax, and tax applies to the entire charge made to the customer including any portion of the charge attributable to the type composition service, whether that charge is separately stated or not. Transfers of engraved printing plates and duplicate plates such as electrotypes, plastic plates, rubber plates, and other plates used in letterpress printing are subject to tax. Similarly, transfers of exposed presensitized, wipe-on, deep-etch, bi-metal and other plates used in offset lithography or of exposed plates produced by a photo-direct method, do not qualify as transfers of reproduction proofs of composed type and are subject to tax. A transfer of gelatin coated film to be transferred to fine mesh silk in the silk-screening process is subject to tax.

(3) Artwork. Artwork is not composed type. The term "artwork" includes, but is not limited to, illustrations (e.g., drawings, diagrams, halftones, or color images), photographs, drawings, paintings, handlettering, and computer generated artwork. The transfer of artwork is subject to tax whether or not it is included with the transfer of composed type. Similarly, the transfer of composed type together with artwork is subject to tax. Transfers of photographic reproductions of such materials also are subject to tax. The entire charge by a typographer for transfers of artwork combined with composed type is subject to tax, including any portion of the charge attributable to the type composition service, regardless of whether the charge for the type composition service is separately stated. However, if the transferred property includes a number of pages, some containing text and artwork and some containing text only, tax applies to charges for any page which includes artwork while no tax applies to charges for any page that includes only text.

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(f) Mailing. Tax does not apply to charges for postage or for addressing for the purpose of mailing (by hand or by mechanical means), folding for the purpose of mailing, enclosing, sealing, preparing for mailing or mailing letters or other printed matters, provided such charges are stated separately on invoices and in the accounting records. Tax applies, however, to charges for envelopes.

(g) Signs, Show Cards, and Posters. Tax applies to retail sales of signs, show cards, and posters, and to charges for painting signs, show cards, and posters whether the materials are furnished by the painter or by the customer.

Tax does not apply to charges for painting or lettering on real property. The painter or letterer is the consumer of the materials used in such work, and tax applies with respect to the sale of such property to him.

~~(h) Examples of Specific Application of Tax.~~

~~—(1) A printer prepares camera-ready copy and uses it to print equipment operating manuals which are sold to the seller of the equipment. The operating manuals are sold without tax for resale. The printer retains title to and possession of the camera-ready copy and eventually discards it. The printer makes a separate charge for the camera-ready copy to the customer. Since the camera ready copy is not sold to the customer, the charge for it is regarded as part of the charge for the manuals. Since the sale of the manuals is not subject to tax, tax does not apply to the separate charge for the camera-ready copy. The printer is the consumer of, and tax applies to the sale to the printer of, materials used to prepare the camera ready art.~~

~~—(2) A publishing company has manuscripts put into the publisher's format by an outside designer. The film house prepares the manuscript and illustration for printing and the film is given to a printer for completion of the process of booklet production. The designer's work consists of only typography with straight line borders around areas designated for illustrations.~~

~~Composed type together with line borders of plain or straight lines is "composed type". Therefore, tax does not apply to the designer's charge for a product in the form of a layout consisting of only composed type and boxes of plain lines with notations within the boxes to designate position and sizes of illustrations.~~

~~—(3) A printer prints business cards, letterheads, brochures and similar property for a customer who provides computer disks on which is embodied the artwork that will be reproduced on a printing plate. Because the printer does not have the special devices to create a paper or film product, the printer manipulates the data and sends it by modem to a typesetting shop. The typesetting shop outputs the information to either film or paper and sends that product to the printer who uses the film or paper to make a printing plate.~~

~~If the typesetting shop transfers a film or paper product which contains only composition of type with no logos or other illustrations, tax does not apply to its charge to the printer. If the film or paper product contains type matter combined with artwork, tax~~



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~~applies to the charge without any deduction on account of the charge for typography. If multiple pages are provided, some of which contain type matter only and others which include illustrations, tax applies to the portion of the charge related to the pages with illustrations.~~

~~—(4) A printer's customer issues a purchase order specifically for printing aids or, on the purchase order for the printed matter, itemizes or otherwise specifies the particular printing aids which will be required by the printer to create the printed matter desired by the customer. The printer obtains such printing aids pursuant to the customer's specific order and bills the printing aids to the customer separately from the billing for the printed matter. The printer either delivers the printing aids to the customer or holds them as bailee for the customer. Under these circumstances, it will be presumed that the printer acquired the property on behalf of the customer or for immediate resale to him or her. Tax applies to the sale of the printing aids to the customer but not also to the purchase of the printing aids by the printer.~~

NOTE:Authority: Section 7051, Revenue and Taxation Code.

Reference: Sections 6006-6012, ~~6051, 6091, and 6201~~, Revenue and Taxation Code.

NOTE: ~~For Publications, exemption of certain, see regulation 1590 (Section 1590), Title 18).~~

NOTE: ~~For Advertising Agencies, see regulation 1540 (Section 1540, Title 18).  
For Mailing Services, see regulation 1504 (Section 1504, Title 18).~~

## Regulation 1541. Printing and Related Arts.

### (a) Definitions.

(1) Special Printing Aid. The term “special printing aid” means a reusable manufacturing aid which is used by a printer during the printing process. Examples of special printing aids include, but are not limited to, electrotypes, stereotypes, photoengravings, silk screens, steel dies, cutting dies, lithographic plates, artwork, film, single color or multicolor separation negatives, and flats.

(2) Printing Process. The term “printing process” includes, but is not limited to, letterpress, flexography, gravure, offset lithography, reprography, screen printing, steel-die engraving, thermography, laser, inkjet, and photocopying.

(3) Reproduction Proof. A direct impression of composed type forms containing type matter only, or a copy of that direct impression made by any method including the diffusion transfer method, and used exclusively for reproduction.

(4) Mechanical or Paste-up. Preparation of copy to make it camera-ready with all type and design elements pasted on artboard or illustration board in exact position and containing instructions, either in the margins or on an overlay, for the platemaker. Also referred to as camera-ready art or camera-ready copy.

(5) Desktop Publishing. Preparation of copy which is produced through the use of publishing software and computers. The transfer of the results of desktop publishing by remote telecommunications, as for example by a modem, or the seller's installation of the results of desktop publishing services onto the customer's computer with no transfer of possession of the storage media are not the sales of tangible personal property. The creation and transfer, by the seller, of the original information created through the use of computers, only of the results of desktop publishing by computer disk or other electronic storage media shall be considered a custom computer program under section 6010.9.

### (b) Application of Tax.

(1) Sales by Printers. Tax applies to charges for printing of tangible personal property for consumers, regardless of whether or not the paper and other materials are furnished by the consumer. The measure of tax is the total gross receipts or sales price of the sale with no deduction on account of (a) the cost of the raw materials or other components, (b) labor or service costs of any step in the process of producing, fabricating, processing, printing, or imprinting the tangible personal property, or (c) any other expenses or services that are a part of the sale. Services that are a part of the sale of tangible personal property to consumers include, but are not limited to charges for overtime, set-up, die cutting, embossing, folding (except as provided in subdivision (f) below), and other binding operations. Printers may not deduct from the gross receipts of their sales of printed matter charges related to their typography work or the cost of typography or typesetting to them. Receipts attributable to such costs are includable in the measure of tax.

Tax applies to a printer's retail sale of special printing aids as provided in subdivision (c).

(2) Purchases by Printers. Printers are consumers of tangible personal property which is not sold prior to use or physically incorporated into the article to be sold. Tax applies to the sale of such property to the printer and also to any sale subsequent to its use by the printer. Such property includes, but is not limited to, machinery (e.g., printing presses and cameras), office equipment, and printing aids. ~~Printers, however, may purchase printing aids for resale as, electronic pre-press equipment, plate makers), and equipment. The application of tax to special printing aids is explained in subdivision (c).~~

(c) Special Printing Aids.

~~-(1) In General. Tax applies to the sale to printers of printing aids used in the printing process regardless that the printer may subsequently sell the printing aids to the person to whom the printed matter is sold. If, however, the contract of sale between the printer and the customer provides that title to printing aids which are of unique utility to that customer passes to the customer prior to the physical use of the property in the printing process, the printer may purchase the printing aids (or the raw materials if the printing aids are fabricated by the printer) for resale. Tax then applies, unless otherwise exempt, to the printer's sale of the printing aids to the customer but not also to the sale to the printer.~~

~~If the contract provides that title to the printing aids passes to the customer in this state prior to use, then a retail sale subject to tax occurs in this state even though the printing aids may subsequently be shipped to a point outside this state. The sale of printing aids located in this state and used here following that sale is not exempt as a sale in interstate commerce. The measure of tax includes any charges by the printer for the fabrication of raw materials into the printing aids. Tax applies regardless of whether the invoice upon which the printing aids are billed is for printed matter the sale of which is nontaxable, e.g., an exempt sale in interstate commerce, an exempt sale of a newspaper or periodical, or a sale for resale.~~

~~-(2) Sale Prior to Use. In determining whether the printer purchases property for resale to the customer, the terms of the contract with the customer, the custom or usage of the trade, and any other pertinent factors will be considered. If title to printing aids passes to the printer's customer prior to use by the printer, such printing aids may be purchased by the printer for resale. Tax, however, will apply to the printer's sale of the printing aids unless otherwise nontaxable, e.g., purchased by the customer for resale. Passage of title prior to use by the printer must be substantiated as provided in subdivision (c)(3) below.~~

~~-(3) Proof of Sale Prior to Use. If facts demonstrate that the printer has sold printing aids to the customer, it will be presumed, in the absence of evidence to the contrary, that the sale of the printing aids occurred prior to use by the printer if:~~

~~—(A) the printing aids are separately listed and priced either upon the same sales invoice for the printed matter or on a separate sales invoice;~~

~~—(B) a statement is included on the sales invoice for the printed matter that title to the printing aids passes to the customer at the printer's place of business prior to use by the printer; or~~

~~—(C) the printer and the customer enter into an explicit agreement prior to the time the printing aids are used, that title to the printing aids will pass to the customer before they are used by the printer. One agreement for each customer is sufficient to satisfy this provision. Declarations of the parties after the transaction is completed are of little value as evidence because of their self-serving nature. The intention of the parties to transfer title prior to the use of the property should be clearly expressed in writing constituting a part of the contract of sale entered into by both parties prior to the use of the property.~~

In recognition of the unique utility that special printing aids have to sales of printed material, and the need to avoid burdening businesses with unnecessary paperwork, the following presumptions shall apply. With respect to sales of printed material ultimately subject to sales tax, or sales to the U. S. Government, it

(1) shall be presumed that the selling price of the printed material includes the selling price of the special printing aids and that title passed to the customer, irrespective of whether or not the printer separately itemizes the special printing aids. It shall be further presumed that the printer, or other reseller, discussed in the following paragraph, made no use of the special printing aids prior to their sale. Accordingly the printer may purchase the special printing aids for resale.

"Ultimately subject to sales tax", means either the printers sale of the printed material and special printing aids is subject to sales tax or is an exempt sale to the U. S. Government, or if the printers sale of the printed material is for resale, a subsequent sale of the printed material and special printing aids is subject to California sales tax or is an exempt sale to the U. S. Government.

(2) If a printer does not wish to sell special printing aids in connection with the sale of printed material ultimately subject to sales tax or sold to the U. S. Government, described in (c)(1) above, the following statement should be included on the sales invoice: "The selling price of the printed material does not include the transfer of title to the special printing aids." The printer would then be the owner and consumer of the special printing aids. Tax would apply to both the retail sale of the printed material and the cost to the printer of the special printing aids.

(3) With respect to all other sales of printed material, as for example, sales in interstate commerce, sales of exempt newspapers or periodicals, or sales of exempt printed sales messages, it shall be presumed that the selling price of the printed material does not include the selling price of the special printing aids. Accordingly no portion of the selling price of the printed material is subject to sales tax and the printer shall be considered the owner and consumer of the special printing aids and tax would apply to the cost of the special printing aids to the printer irrespective of whether or not the printer lists the cost of the special printing aids on the invoice as one of the costs of producing the printed matter.

(4) If a printer wishes to sell special printing aids in connection with all other sales of printed material, discussed in (c)(3) above, the printer shall separately list and price the special printing aids on the sales invoice and charge sales tax on the selling price of the special printing aids. The sales tax would apply to the printer's sale of the special printing aids regardless of whether the printed matter is exempt as, for example, a sale in interstate commerce or a sale of an exempt newspaper or periodical or a sale of an exempt printed sales message, unless the printer received a timely resale certificate which described the property to be purchased for resale as "special printing aids". It shall then be presumed that the printer sold and passed title to the special printing aids prior to use; accordingly the printer may purchase the special printing aids for resale.

If a person issues a resale certificate to a printer for "special printing aids" in connection with all other sales of printed material, as discussed in the above paragraph, the retail sale of those special printing aids by the person issuing the resale certificate shall be subject to tax regardless of whether the printed material is exempt from tax as, for example, a sale in interstate commerce, a sale of an exempt newspaper or periodical, or a sale of an exempt printed sales message.

(5) No other proof shall be required.

(d) Color Separators. The application of tax to printers as explained in subdivisions (b) and (c) also applies to color separators. Color separators are consumers and not retailers of tangible personal property which is not sold prior to use or physically incorporated into the article to be sold. Examples of such property include, but are not limited to, filters and screens, trial proofing materials, disposable lithographic plates, and developing chemicals which do not become incorporated into the article sold. Color separators may purchase property for resale when title to such property passes to the customer prior to use by the color separator or the printer as described in subdivision (c). Alterations of film work by a color separator shall be considered charges for restoring property to its original condition and not subject to tax.

(e) Composed Type.

(1) In General. Tax does not apply to the fabrication or transfer by a typographer or typesetter of composed type, or reproduction proofs of such composed type to printers to use in the preparation of printed matter. The composition of type is the performance of a service, and tax does not apply to charges for such service, unless that service is a part of the sale of printed matter. Tax applies to the gross receipts from the sale of printed matter without any deduction for the charge for typography. See subdivision (e)(3) below for the application of tax to charges for transfers of composed type combined with artwork.

Typographers and typesetters are the consumers and not retailers of materials, such as typesetting machinery, metal forms, galleys, proofing paper, and cleaners which are used in the performance of their service and are consumers of materials transferred to their customers incidental to the performance of nontaxable typography or typesetting services.

Composed type includes type together with lined borders and plain, straight, fancy, or curved lines.

Composed type also includes charts, tables, graphs, and similar methods of providing information.

(2) Photocomposition (Including Phototypesetting and Computer Typesetting). Tax does not apply to the composing of type regardless of whether the type is composed by means of such simplified methods as standard typewriter, desktop publishing, Varityper or Justowriter; by means of photolettering or headlining machines; or by means of a photocomposition (including computer photocomposition) method. Tax does not apply to the transfer, whether temporary or permanent, of the direct product of the type composition service or copy thereof (e.g., typeset matter direct from the typesetting machine ready to be cut and pasted up for reproduction), if that product contains type matter only (see subdivision (e)(3) for the application of tax when artwork is included), whether that product is a paper or film (negative or positive) product, provided the product or copy is to be used exclusively for reproduction.

The transfer of camera-ready copy containing text only in the form of a paste-up, mechanical, or assembly, or a camera-ready reproduction of such, is the transfer of composed type and the charge made by the typographer or typesetter to his or her customer ~~for such~~ is not subject to tax. A transfer of type matter combined with artwork, in the form of a paste-up, mechanical, assembly, or camera-ready copy, or of a flat (including an assemblage of page negatives or positives which contain type matter only), or the transfer of a photoreproduction (including film "plates") of such properties is subject to tax without any deduction on account of the cost or expense of typography, unless the artwork is de minimis. If the transferred property includes text and artwork, ~~tax applies to the artwork, unless the artwork is de minimis~~ ~~number of pages, some containing text and artwork and some containing text only, tax applies to charges for any page which includes artwork while no tax applies to charges for any page that includes only text~~. Tax does not apply to the transfer of a direct photoreproduction of type composed by means of a photolettering or headlining machine or other similar device.

Camera-ready copy which is produced through the use of desktop publishing software and a personal computer is nontaxable composed type provided it does not contain artwork which is not de minimis.

Transfers of plates and mats for use in the printing process which are produced using composed type are subject to tax, and tax applies to the entire charge made to the customer including any portion of the charge attributable to the type composition service, whether that charge is separately stated or not. Transfers of engraved printing plates and duplicate plates such as electrotypes, plastic plates, rubber plates, and other plates used in letterpress printing are subject to tax. Similarly, transfers of exposed presensitized, wipe-on, deep-etch, bi-metal and other plates used in offset lithography or of exposed plates produced by a photo-direct method, do not qualify as transfers of reproduction proofs of composed type and are subject to tax. A transfer of gelatin coated film to be transferred to fine mesh silk in the silk-screening process is subject to tax.

(3) Artwork. Artwork, unless de minimis, is not composed type. The term “artwork” includes, but is not limited to, illustrations (e.g., drawings, diagrams, halftones, or color images), photographs, drawings, paintings, handlettering, and computer generated artwork. The transfer of artwork is subject to tax whether or not it is included with the transfer of composed type, unless the artwork is de minimis. Similarly, the transfer of composed type together with artwork is subject to tax unless the artwork is de minimis. Transfers of photographic reproductions of such materials also are subject to tax. If the artwork is not de minimis, the entire charge by a typographer for transfers of artwork combined with composed type is subject to tax, including any portion of the charge attributable to the type composition service, regardless of whether the charge for the type composition service is separately stated.

(4) De Minimis Artwork. All clip art and computer generated art that is incorporated, through the printing process, into printed material which contains text shall be considered de minimis artwork. All other artwork shall be considered de minimis if the artwork occupies 10% or less of the printed material, containing text, which is produced through the printing process.

(f) Mailing. Tax does not apply to charges for postage or for addressing for the purpose of mailing (by hand or by mechanical means), folding for the purpose of mailing, enclosing, sealing, preparing for mailing or mailing letters or other printed matters, provided such charges are stated separately on invoices and in the accounting records. Tax applies, however, to charges for envelopes.

(g) Signs, Show Cards, and Posters. Tax applies to retail sales of signs, show cards, and posters, and to charges for painting signs, show cards, and posters whether the materials are furnished by the painter or by the customer.

Tax does not apply to charges for painting or lettering on real property. The painter or letterer is the consumer of the materials used in such work, and tax applies with respect to the sale of such property to him.

~~(h) Examples of Specific Application of Tax:~~

~~—(1) A printer prepares camera-ready copy and uses it to print equipment operating manuals which are sold to the seller of the equipment. The operating manuals are sold without tax for resale. The printer retains title to and possession of the camera-ready copy and eventually discards it. The printer makes a separate charge for the camera-ready copy to the customer. Since the camera-ready copy is not sold to the customer, the charge for it is regarded as part of the charge for the manuals. Since the sale of the manuals is not subject to tax, tax does not apply to the separate charge for the camera-ready copy. The printer is the consumer of, and tax applies to the sale to the printer of, materials used to prepare the camera-ready art.~~

~~—(2) A publishing company has manuscripts put into the publisher's format by an outside designer. The film house prepares the manuscript and illustration for printing and the film is given to a printer for completion of the process of booklet production. The designer's work consists of only typography with straight line borders around areas designated for illustrations.~~

~~Composed type together with line borders of plain or straight lines is "composed type". Therefore, tax does not apply to the designer's charge for a product in the form of a layout consisting of only composed type and boxes of plain lines with notations within the boxes to designate position and sizes of illustrations.~~

~~(3) A printer prints business cards, letterheads, brochures and similar property for a customer who provides computer disks on which is embodied the artwork that will be reproduced on a printing plate. Because the printer does not have the special devices to create a paper or film product, the printer manipulates the data and sends it by modem to a typesetting shop. The typesetting shop outputs the information to either film or paper and sends that product to the printer who uses the film or paper to make a printing plate.~~

~~If the typesetting shop transfers a film or paper product which contains only composition of type with no logos or other illustrations, tax does not apply to its charge to the printer. If the film or paper product contains type matter combined with artwork, tax applies to the charge without any deduction on account of the charge for typography. If multiple pages are provided, some of which contain type matter only and others which include illustrations, tax applies to the portion of the charge related to the pages with illustrations.~~

~~(4) A printer's customer issues a purchase order specifically for printing aids or, on the purchase order for the printed matter, itemizes or otherwise specifies the particular printing aids which will be required by the printer to create the printed matter desired by the customer. The printer obtains such printing aids pursuant to the customer's specific order and bills the printing aids to the customer separately from the billing for the printed matter. The printer either delivers the printing aids to the customer or holds them as bailee for the customer. Under these circumstances, it will be presumed that the printer acquired the property on behalf of the customer or for immediate resale to him or her. Tax applies to the sale of the printing aids to the customer but not also to the purchase of the printing aids by the printer.~~

NOTE: Authority: Section 7051, Revenue and Taxation Code.

Reference: Sections 6006-6012, ~~6051, 6091, and 6201~~, Revenue and Taxation Code.

NOTE: ~~For Publications, exemption of certain, see regulation 1590 (Section 1590), Title 18).~~

NOTE: ~~For Advertising Agencies, see regulation 1540 (Section 1540, Title 18).  
For Mailing Services, see regulation 1504 (Section 1504, Title 18).~~



**Regulation 1502 Computers, Programs, and Data Processing**  
*Comparison Between Staff's Version and the Installer's Proposed Language*

Current Regulatory Language	Industry's Proposed Regulatory Language	Staff Recommendation and Comments
<p>(a) IN GENERAL. "Automatic data processing services" are those rendered in performing all or part of a series of data processing operations through an interacting assembly of procedures, processes, methods, personnel, and computers.</p> <p>Automatic data processing services may be provided by manufacturers of computers, data processing centers, systems designers, consultants, software companies, etc. In addition, there are banks and other businesses which own or lease computers and use them primarily for their own purposes but occasionally provide services to others. Businesses rendering automatic data processing services will be referred to herein as "data processing firms."</p>	<p>(a) IN GENERAL. "Automatic data processing services" are those rendered in performing all or part of a series of data processing operations through an interacting assembly of procedures, processes, methods, personnel, and computers.</p> <p>Automatic data processing services may be provided by manufacturers of computers, data processing centers, systems designers, consultants, software companies, etc. In addition, there are banks and other businesses which own or lease computers and use them primarily for their own purposes but occasionally provide services to others. Businesses rendering automatic data processing services will be referred to herein as "data processing firms."</p>	<p>(a) No changes recommended.</p>
<p>(b) DEFINITIONS OF TERMS.</p> <p>Additional copies.....—See (d)(5)(F).</p> <p>Application.....—The specific job performance by an automatic data processing installation is referred to as an application. For example, data processing for a payroll may be referred to as a payroll application.</p>	<p>(b) DEFINITIONS OF TERMS.</p> <p>Additional copies.....—See (d)(5)(F).</p> <p>Application.....—The specific job performance by an automatic data processing installation is referred to as an application. For example, data processing for a payroll may be referred to as a payroll application.</p>	<p>(b) No changes recommended.</p>

**Regulation 1502 Computers, Programs, and Data Processing**  
*Comparison Between Staff's Version and the Installer's Proposed Language*

Current Regulatory Language	Industry's Proposed Regulatory Language	Staff Recommendation and Comments
Coding.....—The list, in computer code, of the successive computer instructions representing successive computer operations for solving a specific problem.	Coding.....—The list, in computer code, of the successive computer instructions representing successive computer operations for solving a specific problem.	
Computer.....—A computer is an electronic device (including word processing equipment and testing equipment) or combination of components, which is programmable and which includes a processor (central processing unit or microprocessor), internal memory, and input and output connections. Manufacturing equipment which incorporates a computer is a computer for purposes of this regulation. However, the term does not include manufacturing equipment which operates under the control of mechanical or electronic accessories, the attachment of the equipment of which is required for the machine to operate. An electronic device otherwise qualifying as a computer remains a computer even though it may be used for information processing, data acquisition, process control or for the control of manufacturing machinery or equipment.	Computer.....—A computer is an electronic device (including word processing equipment and testing equipment) or combination of components, which is programmable and which includes a processor (central processing unit or microprocessor), internal memory, and input and output connections. Manufacturing equipment which incorporates a computer is a computer for purposes of this regulation. However, the term does not include manufacturing equipment which operates under the control of mechanical or electronic accessories, the attachment of the equipment of which is required for the machine to operate. An electronic device otherwise qualifying as a computer remains a computer even though it may be used for information processing, data acquisition, process control or for the control of manufacturing machinery or equipment.	
Custom computer.....—program and programming — A computer program prepared to the special order of the	Custom computer.....—program and programming — A computer program prepared to the special order of the	

**Regulation 1502 Computers, Programs, and Data Processing**  
*Comparison Between Staff's Version and the Installer's Proposed Language*

Current Regulatory Language	Industry's Proposed Regulatory Language	Staff Recommendation and Comments
customer. A program prepared to the special order of the customer qualifies as a custom program even though it may incorporate preexisting routines, utilities or similar program components. It includes those services represented by separately stated charges for modifications to an existing prewritten program which are prepared to the special order of the customer.	customer. A program prepared to the special order of the customer qualifies as a custom program even though it may incorporate preexisting routines, utilities or similar program components. It includes those services represented by separately stated charges for modifications to an existing prewritten program which are prepared to the special order of the customer.	
Data Entry.....—(including Encoding) Recording information in or on storage media by punching holes or inserting magnetic bits to represent letters, digits, and special characters.	Data Entry.....—(including Encoding) Recording information in or on storage media by punching holes or inserting magnetic bits to represent letters, digits, and special characters.	
Input.....—The information or data transferred, or to be transferred, from storage media into the internal storage of the computer.	Input.....—The information or data transferred, or to be transferred, from storage media into the internal storage of the computer.	
Keystroke.....—Verifying — Use of a machine known as a punched card verifier or tape transcriber, which has a keyboard, to ensure that information punched in or transcribed on storage media during the keypunching operation has been entered properly. The machine signals when the punched hole and the depressed key disagree, or when the data on storage media differs from depressed keys.	Keystroke.....—Verifying — Use of a machine known as a punched card verifier or tape transcriber, which has a keyboard, to ensure that information punched in or transcribed on storage media during the keypunching operation has been entered properly. The machine signals when the punched hole and the depressed key disagree, or when the data on storage media differs from depressed keys.	

**Regulation 1502 Computers, Programs, and Data Processing**  
*Comparison Between Staff's Version and the Installer's Proposed Language*

Current Regulatory Language	Industry's Proposed Regulatory Language	Staff Recommendation and Comments
Off-Line.....—Descriptive of a system and the devices in a system in which the operation of equipment is not under the control of a computer.	Off-Line.....—Descriptive of a system and the devices in a system in which the operation of equipment is not under the control of a computer.	
On-Line.....—Descriptive of a system and the devices in a system in which the operation of such equipment is under control of a computer.	On-Line.....—Descriptive of a system and the devices in a system in which the operation of such equipment is under control of a computer.	
Output.....—The information transferred from the internal storage of the computer to storage media or tabulated listing.	Output.....—The information transferred from the internal storage of the computer to storage media or tabulated listing.	
Prewritten.....—Program — A program held or existing for general or repeated sale or lease. The term also includes a program developed for in-house use which is subsequently offered for sale or lease as a product.	Prewritten.....—Program — A program held or existing for general or repeated sale or lease. The term also includes a program developed for in-house use which is subsequently offered for sale or lease as a product.	
Processing of Customer Furnished Information..—See (d)(5).	Processing of Customer Furnished Information..—See (d)(5).	
Program — The complete plan for the solution of a problem, i.e., the complete sequence of automatic data processing equipment instructions necessary to solve a problem; includes both systems and application programs and subdivisions such as assemblers, compilers, routines, generators, and utility programs.	Program — The complete plan for the solution of a problem, i.e., the complete sequence of automatic data processing equipment instructions necessary to solve a problem; includes both systems and application programs and subdivisions such as assemblers, compilers, routines, generators, and utility programs.	

**Regulation 1502 Computers, Programs, and Data Processing**  
*Comparison Between Staff's Version and the Installer's Proposed Language*

Current Regulatory Language	Industry's Proposed Regulatory Language	Staff Recommendation and Comments
Proof Listing.....—A tabulated listing of input.	Proof Listing.....—A tabulated listing of input.	
Source Documents.....—A document supplied by a customer of a data processing firm from which basic data are extracted (e.g., sales invoice).	Source Documents.....—A document supplied by a customer of a data processing firm from which basic data are extracted (e.g., sales invoice).	
Storage media.....—Includes hard disks, floppy disks, diskettes, magnetic tape, cards, paper tape, drums and other devices upon which information is recorded.	Storage media.....—Includes hard disks, floppy disks, diskettes, magnetic tape, cards, paper tape, drums and other devices upon which information is recorded.	
(c) BASIC APPLICATIONS OF TAX.	(c) BASIC APPLICATIONS OF TAX.	
(1) The transfer of title, for a consideration, of tangible personal property, including property on which or into which information has been recorded or incorporated, is a sale subject to tax.	(1) The transfer of title, for a consideration, of tangible personal property, including property on which or into which information has been recorded or incorporated, is a sale subject to tax.	
(2) Charges for producing, fabricating, processing, printing, imprinting or otherwise physically altering, modifying or treating consumer-furnished tangible personal property (cards, tapes, disks, etc.), including charges for recording or otherwise incorporating information on or into such tangible personal property, are generally subject to tax.	(2) Charges for producing, fabricating, processing, printing, imprinting or otherwise physically altering, modifying or treating consumer-furnished tangible personal property (cards, tapes, disks, etc.), including charges for recording or otherwise incorporating information on or into such tangible personal property, are generally subject to tax.	

**Regulation 1502 Computers, Programs, and Data Processing**  
*Comparison Between Staff's Version and the Installer's Proposed Language*

Current Regulatory Language	Industry's Proposed Regulatory Language	Staff Recommendation and Comments
(3) A transfer for a consideration of the title or possession of tangible personal property which has been produced, fabricated, or printed to the special order of the customer, including property on which or into which information has been recorded or incorporated, is generally a sale subject to tax. However, if the contract is for the service of researching and developing original information for a customer, tax does not apply to the charges for the service. The tangible personal property used to transmit the original information is merely incidental to the service.	(3) A transfer for a consideration of the title or possession of tangible personal property which has been produced, fabricated, or printed to the special order of the customer, including property on which or into which information has been recorded or incorporated, is generally a sale subject to tax. However, if the contract is for the service of researching and developing original information for a customer, tax does not apply to the charges for the service. The tangible personal property used to transmit the original information is merely incidental to the service.	
(4) Charges for the transfer of computer-generated output are subject to tax where the true object of the contract is the output and not the services rendered in producing the output. Examples include artwork, graphics, and designs.	(4) Charges for the transfer of computer-generated output are subject to tax where the true object of the contract is the output and not the services rendered in producing the output <u>unless the output is created to the special order of the customer and transferred to the customer in machine readable form such as computer disks or tapes.</u> Examples include artwork, graphics, and designs.	(c)(4) Make no change in the current regulatory language. Staff disagrees that the output is nontaxable as a custom computer program under Section 6010.9
(5) Charges for processing customer-furnished information (sales data, payroll data, etc.) are generally not subject to tax. (For explanation and specific application of tax, see (d) below.)	(5) Charges for processing customer-furnished information (sales data, payroll data, etc.) are generally not subject to tax. (For explanation and specific application of tax, see (d) below.)	

**Regulation 1502 Computers, Programs, and Data Processing**  
*Comparison Between Staff's Version and the Installer's Proposed Language*

Current Regulatory Language	Industry's Proposed Regulatory Language	Staff Recommendation and Comments
(6) Leases of tangible personal property may be subject to tax under certain conditions. (See Regulation 1660 for application of tax to leases.)	(6) Leases of tangible personal property may be subject to tax under certain conditions. (See Regulation 1660 for application of tax to leases.)	
(7) Charges made for the use of a computer, on a time-sharing basis, where access to the computer is by means of remote telecommunication are not subject to tax. (See (i) below.)	(7) Charges made for the use of a computer, on a time-sharing basis, where access to the computer is by means of remote telecommunication are not subject to tax. (See (i) below.)	
(8) Generally data processing firms are consumers of all tangible personal property, including cards and forms, which they use in providing exempt services unless a separate charge is made to customers for the materials, in which case tax applies to the charge made for the materials.	(8) Generally data processing firms are consumers of all tangible personal property, including cards and forms, which they use in providing exempt services unless a separate charge is made to customers for the materials, in which case tax applies to the charge made for the materials.	
(d) MANIPULATION OF CUSTOMER-FURNISHED INFORMATION AS SALE OR SERVICE.	(d) MANIPULATION OF CUSTOMER-FURNISHED INFORMATION AS SALE OR SERVICE.	
(1) GENERAL. Generally tax applies to the conversion of customer-furnished data from one physical form of recordation to another physical form of recordation. However, if the contract is for the service of developing original information from customer-furnished data, tax does not	(1) GENERAL. Generally tax applies to the conversion of customer-furnished data from one physical form of recordation to another physical form of recordation. However, if the contract is for the service of developing original information from customer-furnished data, tax does not	

**Regulation 1502 Computers, Programs, and Data Processing**  
*Comparison Between Staff's Version and the Installer's Proposed Language*

Current Regulatory Language	Industry's Proposed Regulatory Language	Staff Recommendation and Comments
<p>apply to the charges for the service. The tangible personal property used to transmit the original information is merely incidental to the service.</p> <p>(2) DATA ENTRY AND VERIFICATION. This section covers situations where a data processing firm's agreement provides only for data entry, data verification, and proof listing of data, or any combination of these operations. It does not include contracts under which these services are performed as steps in processing of customer-furnished information as discussed under (d)(5).</p> <p>Agreements providing solely for data entry and verification, or data entry, providing a proof list and/or verifying of data are regarded as contracts for the fabrication of storage media and sales of proof lists. Charges therefor are taxable, whether the storage media are furnished by the customer or by the data processing firm.</p> <p>Tax also applies to charges for the imprinting of characters on a document to be used as the input medium in an optical character recognition system. The tax application is the same regardless of which type of storage media is used in the operation.</p>	<p>apply to the charges for the service. The tangible personal property used to transmit the original information is merely incidental to the service.</p> <p>(2) DATA ENTRY AND VERIFICATION. This section covers situations where a data processing firm's agreement provides only for data entry, data verification, and proof listing of data, or any combination of these operations. <del>It does not include contracts under which these services are performed as steps in processing of customer-furnished information as discussed under (d)(5).</del></p> <p>Agreements providing solely for data entry and verification, or data entry, providing a proof list and/or verifying of data are regarded as contracts for the fabrication of storage media and sales of proof lists. Charges therefor are taxable, whether the storage media are furnished by the customer or by the data processing firm.</p> <p>Tax also applies to charges for the imprinting of characters on a document to be used as the input medium in an optical character recognition system. The tax application is the same regardless of which type of storage media is used in the operation.</p>	<p>(d)(2) Make no change in the current regulatory language. Industry's proposed changes are related to desktop publishing issue. Staff disagrees that desktop publishing is a custom computer program under Section 6010.9</p>



**Regulation 1502 Computers, Programs, and Data Processing**  
*Comparison Between Staff's Version and the Installer's Proposed Language*

Current Regulatory Language	Industry's Proposed Regulatory Language	Staff Recommendation and Comments
<p>(3) ADDRESSING (INCLUDING LABELS) FOR MAILING. Where the data processing firm addresses, through the use of its computer or otherwise, material to be mailed, with names and addresses furnished by the customer or maintained by the data processing firm for the customer, tax does not apply to the charge for addressing. Similarly, where the data processing firm prepares, through the use of its computer or otherwise, labels to be affixed to material to be mailed, with names and addresses furnished by the customer or maintained by the data processing firm for the customer, tax does not apply to the charge for producing the labels, regardless of whether the data processing firm itself affixes the labels to the material to be mailed. (Sale of mailing list by proprietor of such list, as a sale of tangible personal property or as an exempt addressing, see Regulation 1504 "Mailing Services")</p> <p>(4) MICROFILMING AND PHOTORECORDING. Tax applies to charges for microfilming or photorecording except, as provided in paragraph (d)(5), where the microfilming or photorecording is done under a contract for the processing of customer-furnished information. Tax</p>	<p>(3) ADDRESSING (INCLUDING LABELS) FOR MAILING. Where the data processing firm addresses, through the use of its computer or otherwise, material to be mailed, with names and addresses furnished by the customer or maintained by the data processing firm for the customer, tax does not apply to the charge for addressing. Similarly, where the data processing firm prepares, through the use of its computer or otherwise, labels to be affixed to material to be mailed, with names and addresses furnished by the customer or maintained by the data processing firm for the customer, tax does not apply to the charge for producing the labels, regardless of whether the data processing firm itself affixes the labels to the material to be mailed. (Sale of mailing list by proprietor of such list, as a sale of tangible personal property or as an exempt addressing, see Regulation 1504 "Mailing Services")</p> <p>(4) MICROFILMING AND PHOTORECORDING. Tax applies to charges for microfilming or photorecording except, as provided in paragraph (d)(5), where the microfilming or photorecording is done under a contract for the processing of customer-furnished information. Tax</p>	

**Regulation 1502 Computers, Programs, and Data Processing**  
*Comparison Between Staff's Version and the Installer's Proposed Language*

Current Regulatory Language	Industry's Proposed Regulatory Language	Staff Recommendation and Comments
<p>applies to a contract where data on magnetic tape are converted into combinations of alphanumeric printing, curve plotting and/or line drawings, and put on microfilm or photorecording paper.</p> <p>(5) PROCESSING OF CUSTOMER-FURNISHED INFORMATION.</p> <p>(A) "Processing of customer-furnished information" means the developing of original information from data furnished by the customer. Examples of automatic data processing processes which result in original information are summarizing, computing, extracting, sorting, and sequencing. Such processes also include the updating of a continuous file of information maintained by the customer with the data processing firm.</p> <p>(B) "Processing of customer-furnished information" does not include: (1) an agreement providing solely for the reformatting of data or for the preparation of a proof listing or the performance of an edit routine or other pre-processing, (2) the using of a computer as a mere printing instrument, as in the preparation of personalized computer-printed letters, (3) the mere converting of data from one</p>	<p>applies to a contract where data on magnetic tape are converted into combinations of alphanumeric printing, curve plotting and/or line drawings, and put on microfilm or photorecording paper.</p> <p>(5) PROCESSING OF CUSTOMER-FURNISHED INFORMATION.</p> <p>(A) "Processing of customer-furnished information" means the developing of original information from data furnished by the customer. Examples of automatic data processing processes which result in original information are summarizing, computing, extracting, sorting, and sequencing. Such processes also include the updating of a continuous file of information maintained by the customer with the data processing firm.</p> <p>(B) "Processing of customer-furnished information" does not include: (1) an agreement providing solely for the reformatting of data or for the preparation of a proof listing or the performance of an edit routine or other pre-processing, (2) the using of a computer as a mere printing instrument, as in the preparation of personalized computer-printed letters, (3) the mere converting of data from one</p>	

**Regulation 1502 Computers, Programs, and Data Processing**  
*Comparison Between Staff's Version and the Installer's Proposed Language*

Current Regulatory Language	Industry's Proposed Regulatory Language	Staff Recommendation and Comments
<p>medium to another, (4) an agreement under which a person undertakes to prepare artwork, drawings, illustrations or other graphic material whether the graphic material is transferred on storage media or otherwise. However, graphic material furnished incidentally to the performance of a service is not subject to tax. For example, graphics furnished in connection with the performance of architectural, engineering, accounting or similar professional services are not subject to tax.</p> <p>(C) Contracts for the processing of customer-furnished information usually provide that the data processing firm will receive the customer's source documents, record data on storage media, make necessary corrections, process the information, and then record and transfer the output to the customer.</p> <p>Where a data processing firm enters into a contract for the processing of customer-furnished information, the transfer of the original information to the customer is considered to be the rendition of a service. Except as described in (c)(8) above and (d)(5)(E) below, tax does not apply to the charges made under contracts providing</p>	<p>medium to another, (4) an agreement under which a person undertakes to prepare artwork, drawings, illustrations or other graphic material <del>whether unless</del> the graphic material is transferred <u>solely</u> on storage media <del>or otherwise. However,</del> <u>Additionally,</u> graphic material furnished incidentally to the performance of a service is not subject to tax. For example, graphics furnished in connection with the performance of architectural, engineering, accounting or similar professional services are not subject to tax.</p> <p>(C) Contracts for the processing of customer-furnished information usually provide that the data processing firm will receive the customer's source documents, record data on storage media, make necessary corrections, process the information, and then record and transfer the output to the customer.</p> <p>Where a data processing firm enters into a contract for the processing of customer-furnished information, the transfer of the original information to the customer is considered to be the rendition of a service. Except as described in (c)(8) above and (d)(5)(E) below, tax does not apply to the charges made under contracts providing</p>	<p>(d)(5)(B)(4) Make no change in the current regulatory language. Industry's proposed changes are related to desktop publishing issue. Staff disagrees that desktop publishing is a custom computer program under Section 6010.9</p>

**Regulation 1502 Computers, Programs, and Data Processing**  
*Comparison Between Staff's Version and the Installer's Proposed Language*

Current Regulatory Language	Industry's Proposed Regulatory Language	Staff Recommendation and Comments
<p>for the transfer of the original information whether the original information is transferred on storage media, microfilm, microfiche, photorecording paper, input media for an optical character recognition system, punched cards, preprinted forms, or tabulated listing. The breakdown of the total charge into separate charges for each operation involved in processing the customer-furnished information will not change the application of tax.</p> <p>(D) The furnishing of computer programs and data by the customer for processing under direction and control of the data processing firm will not alter the application of tax, notwithstanding that charges are based on computer time.</p> <p>(E) Taxable Items. Where a data processing firm has entered into a contract which is regarded as a service contract under paragraph (d)(5)(C) above and the data processing firm, pursuant to the contract, transfers to its customer tangible property other than property containing the original information, such as: duplicate copies of storage media; inventory control cards for use by the customer; membership cards for distribution by the customer; labels (other</p>	<p>for the transfer of the original information whether the original information is transferred on storage media, microfilm, microfiche, photorecording paper, input media for an optical character recognition system, punched cards, preprinted forms, or tabulated listing. The breakdown of the total charge into separate charges for each operation involved in processing the customer-furnished information will not change the application of tax.</p> <p>(D) The furnishing of computer programs and data by the customer for processing under direction and control of the data processing firm will not alter the application of tax, notwithstanding that charges are based on computer time.</p> <p>(E) Taxable Items. Where a data processing firm has entered into a contract which is regarded as a service contract under paragraph (d)(5)(C) above and the data processing firm, pursuant to the contract, transfers to its customer tangible property other than property containing the original information, such as: duplicate copies of storage media; inventory control cards for use by the customer; membership cards for distribution by the customer; labels (other</p>	

**Regulation 1502 Computers, Programs, and Data Processing**  
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Current Regulatory Language	Industry's Proposed Regulatory Language	Staff Recommendation and Comments
<p>than address labels); microfiche duplicates; or similar items for use, tax applies to the charges made for such items. If no separate charge is made, tax applies to that portion of the charge made by the data processing firm which the cost of the additional computer time (if any), cost of materials, and labor cost to produce the items bear to the total job cost.</p> <p>(F) Additional Copies. When additional copies of records, reports, tabulation, etc., are provided, tax applies to the charges made for the additional copies. "Additional copies" are all copies (other than carbon copies), whether the copies are prepared by rerunning the same program, by using multiple simultaneous printers, by looping a program such that the program is run continuously, by using different programs to produce the same output product, or by other means. Where additional copies are prepared the tax will be measured by the charge made by the data processing firm to the customer. If no separate charge is made for the additional copies, tax applies to that portion of the gross receipts which the cost of the additional computer time (if any), the cost of materials and labor cost to produce the additional copies</p>	<p>than address labels); microfiche duplicates; or similar items for use, tax applies to the charges made for such items. If no separate charge is made, tax applies to that portion of the charge made by the data processing firm which the cost of the additional computer time (if any), cost of materials, and labor cost to produce the items bear to the total job cost.</p> <p>(F) Additional Copies. When additional copies of records, reports, tabulation, etc., are provided, tax applies to the charges made for the additional copies. "Additional copies" are all copies (other than carbon copies), whether the copies are prepared by rerunning the same program, by using multiple simultaneous printers, by looping a program such that the program is run continuously, by using different programs to produce the same output product, or by other means. Where additional copies are prepared the tax will be measured by the charge made by the data processing firm to the customer. If no separate charge is made for the additional copies, tax applies to that portion of the gross receipts which the cost of the additional computer time (if any), the cost of materials and labor cost to produce the additional copies</p>	

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Current Regulatory Language	Industry's Proposed Regulatory Language	Staff Recommendation and Comments
bear to the total job cost. Charges for copies produced by means of photocopying, multi-lithing, or by other means are subject to tax.	bear to the total job cost. Charges for copies produced by means of photocopying, multi-lithing, or by other means are subject to tax.	
(e) TRAINING SERVICES AND MATERIALS. Data processing firms provide a number of training services, such as data entry and verification, programming and specialized training in systems design.	(e) TRAINING SERVICES AND MATERIALS. Data processing firms provide a number of training services, such as data entry and verification, programming and specialized training in systems design.	(e) No changes recommended.
(1) Charges for training services are nontaxable, except as provided in (g) below where the training services are provided as part of the sale of tangible personal property. The data processing firm is the consumer of tangible personal property which is used in training others, or provided to trainees without a separate charge as a part of the training services.	(1) Charges for training services are nontaxable, except as provided in (g) below where the training services are provided as part of the sale of tangible personal property. The data processing firm is the consumer of tangible personal property which is used in training others, or provided to trainees without a separate charge as a part of the training services.	
(2) Tax applies to charges for training materials, including books, furnished to trainees for a charge separate from the charge for training services.	(2) Tax applies to charges for training materials, including books, furnished to trainees for a charge separate from the charge for training services.	
(3) Where a person sells tangible personal property, such as computers or programs, and provides training materials to the customer without making an additional	(3) Where a person sells tangible personal property, such as computers or programs, and provides training materials to the customer without making an additional	

**Regulation 1502 Computers, Programs, and Data Processing**  
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<p>charge for the training materials, this is a sale of the training materials. The selling price of the training materials is considered to be included in the sales price of the tangible personal property.</p>	<p>charge for the training materials, this is a sale of the training materials. The selling price of the training materials is considered to be included in the sales price of the tangible personal property.</p>	
<p>(f) COMPUTER PROGRAMS.</p> <p>(1) PREWRITTEN (CANNED) PROGRAMS. Prewritten programs may be transferred to the customer in the form of storage media or by listing the program instructions on coding sheets. In some cases they are usable as written; however, in other cases it is necessary that the program be modified, adapted, and tested to meet the customer's particular needs. Tax applies to the sale or lease of the storage media or coding sheets on which or into which such prewritten (canned) programs have been recorded, coded, or punched.</p> <p>(A) Tax applies whether title to the storage media on which the program is recorded, coded, or punched passes to the customer, or the program is recorded, coded, or punched on storage media furnished by the customer. The temporary transfer of possession of a program, for a consideration, for the purpose of direct</p>	<p>(f) COMPUTER PROGRAMS.</p> <p>(1) PREWRITTEN (CANNED) PROGRAMS. Prewritten programs may be transferred to the customer in the form of storage media or by listing the program instructions on coding sheets. In some cases they are usable as written; however, in other cases it is necessary that the program be modified, adapted, and tested to meet the customer's particular needs. Tax applies to the sale or lease of the storage media or coding sheets on which or into which such prewritten (canned) programs have been recorded, coded, or punched.</p> <p>(A) Tax applies whether title to the storage media on which the program is recorded, coded, or punched passes to the customer, or the program is recorded, coded, or punched on storage media furnished by the customer. The temporary transfer of possession of a program, for a consideration, for the purpose of direct</p>	<p>(f) No changes recommended.</p>

**Regulation 1502 Computers, Programs, and Data Processing**  
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<p>use or to be recorded or punched by the customer, or by the lessor on the customer's premises, is a lease of tangible personal property. The tax applies unless the property is leased in substantially the same form as acquired by the lessor and the lessor has paid sales tax reimbursement or use tax with respect to the property.</p> <p>(B) Tax applies to the entire amount charged to the customer. Where the consideration consists of license fees, all license fees, including site licensing and other end users fees, are includable in the measure of tax. Tax does not apply, however, to license fees or royalty payments that are made for the right to reproduce or copy a program to which a federal copyright attaches in order for the program to be published and distributed for a consideration to third parties, even if a tangible copy of the program is transferred concurrently with the granting of such right. Any storage media used to transmit the program is merely incidental.</p> <p>(C) Maintenance contracts sold in connection with the sale or lease of prewritten computer programs generally provide that the purchaser will be entitled</p>	<p>use or to be recorded or punched by the customer, or by the lessor on the customer's premises, is a lease of tangible personal property. The tax applies unless the property is leased in substantially the same form as acquired by the lessor and the lessor has paid sales tax reimbursement or use tax with respect to the property.</p> <p>(B) Tax applies to the entire amount charged to the customer. Where the consideration consists of license fees, all license fees, including site licensing and other end users fees, are includable in the measure of tax. Tax does not apply, however, to license fees or royalty payments that are made for the right to reproduce or copy a program to which a federal copyright attaches in order for the program to be published and distributed for a consideration to third parties, even if a tangible copy of the program is transferred concurrently with the granting of such right. Any storage media used to transmit the program is merely incidental.</p> <p>(C) Maintenance contracts sold in connection with the sale or lease of prewritten computer programs generally provide that the purchaser will be entitled</p>	



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to receive, during the contract period, storage media on which prewritten program improvements or error corrections have been recorded. The maintenance contract also may provide that the purchaser will be entitled to receive, during the contract period, telephone or on-site consultation services.	to receive, during the contract period, storage media on which prewritten program improvements or error corrections have been recorded. The maintenance contract also may provide that the purchaser will be entitled to receive, during the contract period, telephone or on-site consultation services.	
If the purchase of the maintenance contract is not optional with the purchaser, then the charges for the maintenance contract are taxable, including charges for consultation services, as part of the sale or lease of the prewritten program.	If the purchase of the maintenance contract is not optional with the purchaser, then the charges for the maintenance contract are taxable, including charges for consultation services, as part of the sale or lease of the prewritten program.	
If the purchase of the maintenance contract is optional with the purchaser, but the purchaser does not have the option to purchase the consultation services in addition to the sale or lease of storage media containing program improvements or error corrections, then the charges for the consultation services are taxable as part of the sale or lease of the storage media. If, however, the purchaser may, at its option, contract for the consultation services for a separately stated price, in addition to the charges made for the storage media, then the charges for the consultation services are nontaxable.	If the purchase of the maintenance contract is optional with the purchaser, but the purchaser does not have the option to purchase the consultation services in addition to the sale or lease of storage media containing program improvements or error corrections, then the charges for the consultation services are taxable as part of the sale or lease of the storage media. If, however, the purchaser may, at its option, contract for the consultation services for a separately stated price, in addition to the charges made for the storage media, then the charges for the consultation services are nontaxable.	

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<p>(D) The sale or lease of a prewritten program is not a taxable transaction if the program is transferred by remote telecommunications from the seller's place of business, to or through the purchaser's computer and the purchaser does not obtain possession of any tangible personal property, such as storage media, in the transaction. Likewise, the sale of a prewritten program is not a taxable transaction if the program is installed by the seller on the customer's computer except when the seller transfers title to or possession of storage media or installation of the program is a part of the sale of the computer.</p> <p>If the transfer of a prewritten program is a nontaxable transaction, then the seller is the consumer of tangible personal property used to produce written documentation or manuals (including documentation or manuals in machine-readable form) designed to facilitate the use of the program and transferred to the purchaser for no additional charge. If a separate charge is made for the documentation or manuals, then tax applies to the separate charge.</p>	<p>(D) The sale or lease of a prewritten program is not a taxable transaction if the program is transferred by remote telecommunications from the seller's place of business, to or through the purchaser's computer and the purchaser does not obtain possession of any tangible personal property, such as storage media, in the transaction. Likewise, the sale of a prewritten program is not a taxable transaction if the program is installed by the seller on the customer's computer except when the seller transfers title to or possession of storage media or installation of the program is a part of the sale of the computer.</p> <p>If the transfer of a prewritten program is a nontaxable transaction, then the seller is the consumer of tangible personal property used to produce written documentation or manuals (including documentation or manuals in machine-readable form) designed to facilitate the use of the program and transferred to the purchaser for no additional charge. If a separate charge is made for the documentation or manuals, then tax applies to the separate charge.</p>	

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<p>(E) The transfer of a prewritten program on storage media is not a sale for resale when the storage media, or an exact copy, will be used to produce additional copies of the program.</p> <p>Charges for testing a prewritten program on the purchaser's computer to insure that such a program operates as required are installation charges and are nontaxable.</p> <p>(2) CUSTOM PROGRAMS</p> <p>(A) Tax does not apply to the sale or lease of a custom computer program, other than a basic operational program, regardless of the form in which the program is transferred. Nor does the tax apply to the transfer of a custom program, or custom programming services performed, in connection with the sale or lease of computer equipment, whether or not the charges for the custom program or programming are separately stated.</p> <p>(B) However, charges for custom modifications to prewritten programs are nontaxable only if the charges for the modifications are separately stated. Otherwise, the charges are taxable as services part of the sale of the prewritten program.</p>	<p>(E) The transfer of a prewritten program on storage media is not a sale for resale when the storage media, or an exact copy, will be used to produce additional copies of the program.</p> <p>Charges for testing a prewritten program on the purchaser's computer to insure that such a program operates as required are installation charges and are nontaxable.</p> <p>(2) CUSTOM PROGRAMS</p> <p>(A) Tax does not apply to the sale or lease of a custom computer program, other than a basic operational program, regardless of the form in which the program is transferred. Nor does the tax apply to the transfer of a custom program, or custom programming services performed, in connection with the sale or lease of computer equipment, whether or not the charges for the custom program or programming are separately stated.</p> <p>(B) However, charges for custom modifications to prewritten programs are nontaxable only if the charges for the modifications are separately stated. Otherwise, the charges are taxable as services part of the sale of the prewritten program.</p>	

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<p>When the charges for modification of a prewritten program are not separately stated, tax applies to the entire charge made to the customer for the modified program unless the modification is so significant that the new program qualifies as a custom program. If the prewritten program was previously marketed, the new program will qualify as a custom program, if the price of the prewritten program was 50% or less of the price of the new program. If the prewritten program was not previously marketed, the new program will qualify as a custom program, if the charge made to the customer for custom programming services, as evidenced in the records of the seller, was more than 50% of the contract price to the customer.</p> <p>(C) Any written documentation or manuals designed to facilitate the use of a custom computer program by the customer are nontaxable, whether or not a separate charge is made for the documentation or manuals. The vendor of the custom computer program is the consumer of the written documentation or manuals, or of any tangible personal property used by the vendor in producing the written documentation or manuals.</p>	<p>When the charges for modification of a prewritten program are not separately stated, tax applies to the entire charge made to the customer for the modified program unless the modification is so significant that the new program qualifies as a custom program. If the prewritten program was previously marketed, the new program will qualify as a custom program, if the price of the prewritten program was 50% or less of the price of the new program. If the prewritten program was not previously marketed, the new program will qualify as a custom program, if the charge made to the customer for custom programming services, as evidenced in the records of the seller, was more than 50% of the contract price to the customer.</p> <p>(C) Any written documentation or manuals designed to facilitate the use of a custom computer program by the customer are nontaxable, whether or not a separate charge is made for the documentation or manuals. The vendor of the custom computer program is the consumer of the written documentation or manuals, or of any tangible personal property used by the vendor in producing the written documentation or manuals.</p>	

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<p>(D) A custom computer program includes a program prepared to the special order of a customer who will use the program to produce and sell or lease copies of the program. The copies, however, are taxable as prewritten computer programs. The later sale or lease of such copies does not affect the nontaxability of the original custom computer program.</p>	<p>(D) A custom computer program includes a program prepared to the special order of a customer who will use the program to produce and sell or lease copies of the program. The copies, however, are taxable as prewritten computer programs. The later sale or lease of such copies does not affect the nontaxability of the original custom computer program.</p>	
<p>(E) A computer program prepared to the special order of a customer to operate for the first time in connection with a particular basic operating system is a custom computer program even though a different version currently operates in connection with an incompatible basic operating system.</p>	<p>(E) A computer program prepared to the special order of a customer to operate for the first time in connection with a particular basic operating system is a custom computer program even though a different version currently operates in connection with an incompatible basic operating system.</p>	
<p>(g) SERVICE CHARGES. The following activities are service activities. Charges for the performance of such services are nontaxable unless the services are performed as a part of the sale of tangible personal property.</p>	<p>(g) SERVICE CHARGES. The following activities are service activities. Charges for the performance of such services are nontaxable unless the services are performed as a part of the sale of tangible personal property.</p>	<p>(g) No changes recommended.</p>
<p>(1) Designing and implementing computer systems. (e.g., determining equipment and personnel required and how they will be utilized.)</p>	<p>(1) Designing and implementing computer systems. (e.g., determining equipment and personnel required and how they will be utilized.)</p>	

**Regulation 1502 Computers, Programs, and Data Processing**  
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(2) Designing storage and data retrieval systems. (e.g., determining what data communications and high-speed input-output terminals are required.)	(2) Designing storage and data retrieval systems. (e.g., determining what data communications and high-speed input-output terminals are required.)	
(3) Consulting services. (e.g., study of all or part of a data processing system.)	(3) Consulting services. (e.g., study of all or part of a data processing system.)	
(4) Feasibility studies. (e.g., studies to determine what benefits would be derived if procedures were automated.)	(4) Feasibility studies. (e.g., studies to determine what benefits would be derived if procedures were automated.)	
(5) Evaluation of bids. (e.g., studies to determine which manufacturer's proposal for computer equipment would be most beneficial.)	(5) Evaluation of bids. (e.g., studies to determine which manufacturer's proposal for computer equipment would be most beneficial.)	
(6) Providing technical help, analysts and programmers, usually on an hourly basis.	(6) Providing technical help, analysts and programmers, usually on an hourly basis.	
(7) Training Services.	(7) Training Services.	
(8) Maintenance of equipment. (See Regulation 1546 for application of tax to maintenance contracts.)	(8) Maintenance of equipment. (See Regulation 1546 for application of tax to maintenance contracts.)	
(9) Consultation as to use of equipment.	(9) Consultation as to use of equipment.	
(h) PICK-UP AND DELIVERY CHARGES. If the data processing firm's billing is for nontaxable processing of customer-	(h) PICK-UP AND DELIVERY CHARGES. If the data processing firm's billing is for nontaxable processing of customer-	h) No changes recommended.

**Regulation 1502 Computers, Programs, and Data Processing**  
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furnished information, the tax will not apply to pick-up and delivery charges. If pick-up and delivery charges are made in conjunction with the sale of tangible personal property or the processing of customer-furnished tangible personal property, the tax will apply to the pick-up charges. Tax will apply to the delivery charges to the extent specified in Regulation 1628 "Transportation Charges."	furnished information, the tax will not apply to pick-up and delivery charges. If pick-up and delivery charges are made in conjunction with the sale of tangible personal property or the processing of customer-furnished tangible personal property, the tax will apply to the pick-up charges. Tax will apply to the delivery charges to the extent specified in Regulation 1628 "Transportation Charges."	(i) No changes recommended.
(i) RENTAL OF COMPUTERS. A lease includes a contract by which a person secures for a consideration the use of a computer which is not on his premises, if the person or his employees, while on the premises where the computer is located operate the computer, or direct and control its operation. A lease does not include a contract whereby a person secures access by means of remote telecommunication, to a computer which is not on his premises, if the person or his employees operate the computer or direct and control its operation by means of remote telecommunication. (See Regulation 1660 for application of tax to leases.)	(i) RENTAL OF COMPUTERS. A lease includes a contract by which a person secures for a consideration the use of a computer which is not on his premises, if the person or his employees, while on the premises where the computer is located operate the computer, or direct and control its operation. A lease does not include a contract whereby a person secures access by means of remote telecommunication, to a computer which is not on his premises, if the person or his employees operate the computer or direct and control its operation by means of remote telecommunication. (See Regulation 1660 for application of tax to leases.)	

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## Regulation 1502. Computers, Programs, and Data Processing.

(a) IN GENERAL. "Automatic data processing services" are those rendered in performing all or part of a series of data processing operations through an interacting assembly of procedures, processes, methods, personnel, and computers.

Automatic data processing services may be provided by manufacturers of computers, data processing centers, systems designers, consultants, software companies, etc. In addition, there are banks and other businesses which own or lease computers and use them primarily for their own purposes but occasionally provide services to others. Businesses rendering automatic data processing services will be referred to herein as "data processing firms."

(b) DEFINITIONS OF TERMS.

Additional copies.....—See (d)(5)(F).

Application.....—The specific job performance by an automatic data processing installation is referred to as an application. For example, data processing for a payroll may be referred to as a payroll application.

Coding.....—The list, in computer code, of the successive computer instructions representing successive computer operations for solving a specific problem.

Computer.....—A computer is an electronic device (including word processing equipment and testing equipment) or combination of components, which is programmable and which includes a processor (central processing unit or microprocessor), internal memory, and input and output connections. Manufacturing equipment which incorporates a computer is a computer for purposes of this regulation. However, the term does not include manufacturing equipment which operates under the control of mechanical or electronic accessories, the attachment of the equipment of which is required for the machine to operate. An electronic device otherwise qualifying as a computer remains a computer even though it may be used for information processing, data acquisition, process control or for the control of manufacturing machinery or equipment.

Custom computer.....—program and programming — A computer program prepared to the special order of the customer. A program prepared to the special order of the customer qualifies as a custom program even though it may incorporate preexisting routines, utilities or similar program components. It includes those services represented by separately stated charges for modifications to an existing prewritten program which are prepared to the special order of the customer.

Data Entry.....—(including Encoding) Recording information in or on storage media by punching holes or inserting magnetic bits to represent letters, digits, and special characters.

Input.....—The information or data transferred, or to be transferred, from storage media into the internal storage of the computer.



**Keystroke.....—Verifying** — Use of a machine known as a punched card verifier or tape transcriber, which has a keyboard, to ensure that information punched in or transcribed on storage media during the keypunching operation has been entered properly. The machine signals when the punched hole and the depressed key disagree, or when the data on storage media differs from depressed keys.

**Off-Line.....—Descriptive of a system and the devices in a system in which the operation of equipment is not under the control of a computer.**

**On-Line.....—Descriptive of a system and the devices in a system in which the operation of such equipment is under control of a computer.**

**Output.....—The information transferred from the internal storage of the computer to storage media or tabulated listing.**

**Prewritten.....—Program** — A program held or existing for general or repeated sale or lease. The term also includes a program developed for in-house use which is subsequently offered for sale or lease as a product.

**Processing of Customer Furnished Information..—See (d)(5).**

**Program** — The complete plan for the solution of a problem, i.e., the complete sequence of automatic data processing equipment instructions necessary to solve a problem; includes both systems and application programs and subdivisions such as assemblers, compilers, routines, generators, and utility programs.

**Proof Listing.....—A tabulated listing of input.**

**Source Documents.....—A document supplied by a customer of a data processing firm from which basic data are extracted (e.g., sales invoice).**

**Storage media.....—Includes hard disks, floppy disks, diskettes, magnetic tape, cards, paper tape, drums and other devices upon which information is recorded.**

#### **(c) BASIC APPLICATIONS OF TAX.**

(1) The transfer of title, for a consideration, of tangible personal property, including property on which or into which information has been recorded or incorporated, is a sale subject to tax.

(2) Charges for producing, fabricating, processing, printing, imprinting or otherwise physically altering, modifying or treating consumer-furnished tangible personal property (cards, tapes, disks, etc.), including charges for recording or otherwise incorporating information on or into such tangible personal property, are generally subject to tax.

(3) A transfer for a consideration of the title or possession of tangible personal property which has been produced, fabricated, or printed to the special order of the customer, including property on which or into which information has been recorded or incorporated, is generally a sale subject to tax. However, if the contract is for the service of researching and developing original information for a customer, tax does not apply to the charges for

the service. The tangible personal property used to transmit the original information is merely incidental to the service.

(4) Charges for the transfer of computer-generated output are subject to tax where the true object of the contract is the output and not the services rendered in producing the output unless the output is created to the special order of the customer and transferred to the customer in machine readable form such as computer disks or tapes. Examples include artwork, graphics, and designs.

(5) Charges for processing customer-furnished information (sales data, payroll data, etc.) are generally not subject to tax. (For explanation and specific application of tax, see (d) below.)

(6) Leases of tangible personal property may be subject to tax under certain conditions. (See Regulation 1660 for application of tax to leases.)

(7) Charges made for the use of a computer, on a time-sharing basis, where access to the computer is by means of remote telecommunication are not subject to tax. (See (i) below.)

(8) Generally data processing firms are consumers of all tangible personal property, including cards and forms, which they use in providing exempt services unless a separate charge is made to customers for the materials, in which case tax applies to the charge made for the materials.

(d) MANIPULATION OF CUSTOMER-FURNISHED INFORMATION AS SALE OR SERVICE.

(1) GENERAL. Generally tax applies to the conversion of customer-furnished data from one physical form of recordation to another physical form of recordation. However, if the contract is for the service of developing original information from customer-furnished data, tax does not apply to the charges for the service. The tangible personal property used to transmit the original information is merely incidental to the service.

(2) DATA ENTRY AND VERIFICATION. This section covers situations where a data processing firm's agreement provides only for data entry, data verification, and proof listing of data, or any combination of these operations. ~~It does not include contracts under which these services are performed as steps in processing of customer-furnished information as discussed under (d)(5).~~

Agreements providing solely for data entry and verification, or data entry, providing a proof list and/or verifying of data are regarded as contracts for the fabrication of storage media and sales of proof lists. Charges therefor are taxable, whether the storage media are furnished by the customer or by the data processing firm.

Tax also applies to charges for the imprinting of characters on a document to be used as the input medium in an optical character recognition system. The tax application is the same regardless of which type of storage media is used in the operation.

(3) ADDRESSING (INCLUDING LABELS) FOR MAILING. Where the data processing firm addresses, through the use of its computer or otherwise, material to be mailed, with names and addresses furnished by the customer or maintained by the data processing firm for the customer, tax does not apply to the charge for addressing. Similarly, where the data processing firm prepares, through the use of its computer or otherwise, labels to be affixed to material to be mailed, with names and addresses furnished by the customer or maintained by the data processing firm for the customer, tax does not apply to the charge for producing the labels, regardless of whether the data processing firm itself affixes the labels to the material to be mailed. (Sale of mailing list by proprietor of such list, as a sale of tangible personal property or as an exempt addressing, see Regulation 1504 "Mailing Services")

(4) MICROFILMING AND PHOTORECORDING. Tax applies to charges for microfilming or photorecording except, as provided in paragraph (d)(5), where the microfilming or photorecording is done under a contract for the processing of customer-furnished information. Tax applies to a contract where data on magnetic tape are converted into combinations of alphanumeric printing, curve plotting and/or line drawings, and put on microfilm or photorecording paper.

(5) PROCESSING OF CUSTOMER-FURNISHED INFORMATION.

(A) "Processing of customer-furnished information" means the developing of original information from data furnished by the customer. Examples of automatic data processing processes which result in original information are summarizing, computing, extracting, sorting, and sequencing. Such processes also include the updating of a continuous file of information maintained by the customer with the data processing firm.

(B) "Processing of customer-furnished information" does not include: (1) an agreement providing solely for the reformatting of data or for the preparation of a proof listing or the performance of an edit routine or other pre-processing, (2) the using of a computer as a mere printing instrument, as in the preparation of personalized computer-printed letters, (3) the mere converting of data from one medium to another, (4) an agreement under which a person undertakes to prepare artwork, drawings, illustrations or other graphic material ~~whether unless~~ the graphic material is transferred solely on storage media ~~or otherwise. However, Additionally,~~ graphic material furnished incidentally to the performance of a service is not subject to tax. For example, graphics furnished in connection with the performance of architectural, engineering, accounting or similar professional services are not subject to tax.

(C) Contracts for the processing of customer-furnished information usually provide that the data processing firm will receive the customer's source documents, record data on storage media, make necessary corrections, process the information, and then record and transfer the output to the customer.

Where a data processing firm enters into a contract for the processing of customer-furnished information, the transfer of the original information to the customer is considered to be the rendition of a service. Except as described in (c)(8) above and (d)(5)(E) below, tax does not apply to the charges made under contracts providing for the transfer of the original information whether the original information is transferred on

storage media, microfilm, microfiche, photorecording paper, input media for an optical character recognition system, punched cards, preprinted forms, or tabulated listing. The breakdown of the total charge into separate charges for each operation involved in processing the customer-furnished information will not change the application of tax.

(D) The furnishing of computer programs and data by the customer for processing under direction and control of the data processing firm will not alter the application of tax, notwithstanding that charges are based on computer time.

(E) Taxable Items. Where a data processing firm has entered into a contract which is regarded as a service contract under paragraph (d)(5)(C) above and the data processing firm, pursuant to the contract, transfers to its customer tangible property other than property containing the original information, such as: duplicate copies of storage media; inventory control cards for use by the customer; membership cards for distribution by the customer; labels (other than address labels); microfiche duplicates; or similar items for use, tax applies to the charges made for such items. If no separate charge is made, tax applies to that portion of the charge made by the data processing firm which the cost of the additional computer time (if any), cost of materials, and labor cost to produce the items bear to the total job cost.

(F) Additional Copies. When additional copies of records, reports, tabulation, etc., are provided, tax applies to the charges made for the additional copies. "Additional copies" are all copies (other than carbon copies), whether the copies are prepared by rerunning the same program, by using multiple simultaneous printers, by looping a program such that the program is run continuously, by using different programs to produce the same output product, or by other means. Where additional copies are prepared the tax will be measured by the charge made by the data processing firm to the customer. If no separate charge is made for the additional copies, tax applies to that portion of the gross receipts which the cost of the additional computer time (if any), the cost of materials and labor cost to produce the additional copies bear to the total job cost. Charges for copies produced by means of photocopying, multi-lithing, or by other means are subject to tax.

(e) TRAINING SERVICES AND MATERIALS. Data processing firms provide a number of training services, such as data entry and verification, programming and specialized training in systems design.

(1) Charges for training services are nontaxable, except as provided in (g) below where the training services are provided as part of the sale of tangible personal property. The data processing firm is the consumer of tangible personal property which is used in training others, or provided to trainees without a separate charge as a part of the training services.

(2) Tax applies to charges for training materials, including books, furnished to trainees for a charge separate from the charge for training services.

(3) Where a person sells tangible personal property, such as computers or programs, and provides training materials to the customer without making an additional charge

for the training materials, this is a sale of the training materials. The selling price of the training materials is considered to be included in the sales price of the tangible personal property.

(f) COMPUTER PROGRAMS.

(1) PREWRITTEN (CANNED) PROGRAMS. Prewritten programs may be transferred to the customer in the form of storage media or by listing the program instructions on coding sheets. In some cases they are usable as written; however, in other cases it is necessary that the program be modified, adapted, and tested to meet the customer's particular needs. Tax applies to the sale or lease of the storage media or coding sheets on which or into which such prewritten (canned) programs have been recorded, coded, or punched.

(A) Tax applies whether title to the storage media on which the program is recorded, coded, or punched passes to the customer, or the program is recorded, coded, or punched on storage media furnished by the customer. The temporary transfer of possession of a program, for a consideration, for the purpose of direct use or to be recorded or punched by the customer, or by the lessor on the customer's premises, is a lease of tangible personal property. The tax applies unless the property is leased in substantially the same form as acquired by the lessor and the lessor has paid sales tax reimbursement or use tax with respect to the property.

(B) Tax applies to the entire amount charged to the customer. Where the consideration consists of license fees, all license fees, including site licensing and other end users fees, are includable in the measure of tax. Tax does not apply, however, to license fees or royalty payments that are made for the right to reproduce or copy a program to which a federal copyright attaches in order for the program to be published and distributed for a consideration to third parties, even if a tangible copy of the program is transferred concurrently with the granting of such right. Any storage media used to transmit the program is merely incidental.

(C) Maintenance contracts sold in connection with the sale or lease of prewritten computer programs generally provide that the purchaser will be entitled to receive, during the contract period, storage media on which prewritten program improvements or error corrections have been recorded. The maintenance contract also may provide that the purchaser will be entitled to receive, during the contract period, telephone or on-site consultation services.

If the purchase of the maintenance contract is not optional with the purchaser, then the charges for the maintenance contract are taxable, including charges for consultation services, as part of the sale or lease of the prewritten program.

If the purchase of the maintenance contract is optional with the purchaser, but the purchaser does not have the option to purchase the consultation services in addition to the sale or lease of storage media containing program improvements or error corrections, then the charges for the consultation services are taxable as part of the sale or lease of the storage media. If, however, the purchaser may, at its option, contract for the

consultation services for a separately stated price, in addition to the charges made for the storage media, then the charges for the consultation services are nontaxable.

(D) The sale or lease of a prewritten program is not a taxable transaction if the program is transferred by remote telecommunications from the seller's place of business, to or through the purchaser's computer and the purchaser does not obtain possession of any tangible personal property, such as storage media, in the transaction. Likewise, the sale of a prewritten program is not a taxable transaction if the program is installed by the seller on the customer's computer except when the seller transfers title to or possession of storage media or installation of the program is a part of the sale of the computer.

If the transfer of a prewritten program is a nontaxable transaction, then the seller is the consumer of tangible personal property used to produce written documentation or manuals (including documentation or manuals in machine-readable form) designed to facilitate the use of the program and transferred to the purchaser for no additional charge. If a separate charge is made for the documentation or manuals, then tax applies to the separate charge.

(E) The transfer of a prewritten program on storage media is not a sale for resale when the storage media, or an exact copy, will be used to produce additional copies of the program.

Charges for testing a prewritten program on the purchaser's computer to insure that such a program operates as required are installation charges and are nontaxable.

## (2) CUSTOM PROGRAMS

(A) Tax does not apply to the sale or lease of a custom computer program, other than a basic operational program, regardless of the form in which the program is transferred. Nor does the tax apply to the transfer of a custom program, or custom programming services performed, in connection with the sale or lease of computer equipment, whether or not the charges for the custom program or programming are separately stated.

(B) However, charges for custom modifications to prewritten programs are nontaxable only if the charges for the modifications are separately stated. Otherwise, the charges are taxable as services part of the sale of the prewritten program.

When the charges for modification of a prewritten program are not separately stated, tax applies to the entire charge made to the customer for the modified program unless the modification is so significant that the new program qualifies as a custom program. If the prewritten program was previously marketed, the new program will qualify as a custom program, if the price of the prewritten program was 50% or less of the price of the new program. If the prewritten program was not previously marketed, the new program will qualify as a custom program, if the charge made to the customer for custom programming services, as evidenced in the records of the seller, was more than 50% of the contract price to the customer.

(C) Any written documentation or manuals designed to facilitate the use of a custom computer program by the customer are nontaxable, whether or not a separate charge is made for the documentation or manuals. The vendor of the custom computer program is the consumer of the written documentation or manuals, or of any tangible personal property used by the vendor in producing the written documentation or manuals.

(D) A custom computer program includes a program prepared to the special order of a customer who will use the program to produce and sell or lease copies of the program. The copies, however, are taxable as prewritten computer programs. The later sale or lease of such copies does not affect the nontaxability of the original custom computer program.

(E) A computer program prepared to the special order of a customer to operate for the first time in connection with a particular basic operating system is a custom computer program even though a different version currently operates in connection with an incompatible basic operating system.

(g) SERVICE CHARGES. The following activities are service activities. Charges for the performance of such services are nontaxable unless the services are performed as a part of the sale of tangible personal property.

(1) Designing and implementing computer systems. (e.g., determining equipment and personnel required and how they will be utilized.)

(2) Designing storage and data retrieval systems. (e.g., determining what data communications and high-speed input-output terminals are required.)

(3) Consulting services. (e.g., study of all or part of a data processing system.)

(4) Feasibility studies. (e.g., studies to determine what benefits would be derived if procedures were automated.)

(5) Evaluation of bids. (e.g., studies to determine which manufacturer's proposal for computer equipment would be most beneficial.)

(6) Providing technical help, analysts and programmers, usually on an hourly basis.

(7) Training Services.

(8) Maintenance of equipment. (See Regulation 1546 for application of tax to maintenance contracts.)

(9) Consultation as to use of equipment.

(h) PICK-UP AND DELIVERY CHARGES. If the data processing firm's billing is for nontaxable processing of customer-furnished information, the tax will not apply to pick-up and delivery charges. If pick-up and delivery charges are made in conjunction with the sale of tangible personal property or the processing of customer-furnished tangible personal property, the tax will apply to the pick-up charges. Tax will apply to the delivery charges to the extent specified in Regulation 1628 "Transportation Charges."

(i) RENTAL OF COMPUTERS. A lease includes a contract by which a person secures for a consideration the use of a computer which is not on his premises, if the person or his employees, while on the premises where the computer is located operate the computer, or direct and control its operation. A lease does not include a contract whereby a person secures access by means of remote telecommunication, to a computer which is not on his premises, if the person or his employees operate the computer or direct and control its operation by means of remote telecommunication. (See Regulation 1660 for application of tax to leases.)

*History:* Adopted February 17, 1972, effective March 25, 1972.

Amended November 18, 1987, effective March 4, 1988. In subdivision (b), amended the regulation to conform several definitions with industry standards. In subdivision (c), amended the regulation to make clear and specific the basic application of tax. In subdivision (f), amended the regulation to make clear and specific the application of tax to prewritten computer programs.

Amended June 24, 1998, effective January 29, 1999. Subdivision (b) amended to delete last sentence and add new second sentence. Subdivision (f)(1)(D) amended to add new last sentence.